CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 86

WILLIAM H. GRIFFIN, PETITIONER,

vs.

GRACE H. GRIFFIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED MAY 23, 1945.

CERTIORARI GRANTED OCTOBER 8, 1945.

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Caption omitted]

[fol. 1] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 19505

GRACE H. GRIFFIN, 131 E. 93rd Street, New York City, N. Y.,
Plaintiff,

vs.

WILLIAM H. GRIFFIN, Apartment 212, 4801 Connecticut Ave., N. W., Washington, D. C., Defendant

COMPLAINT ON FOREIGN JUDGMENT—Filed April 28, 1943

1. The jurisdiction of this Court pertaining to the claim herein, is derived from Title 11, Section 301 and Section 305, of the (1940) Code of Laws for the District of Columbia.

2. The plaintiff is a citizen of the United States, a resident of the State of New York, and was formerly the wife of the defendant.

3. The defendant is a citizen of the United States, and is believed to be a resident of the District of Columbia, now residing at 4801 Connecticut Avenue, N. W.

4. The plaintiff, Grace H. Griffin, sues the defendant William H. Griffin, for that in a certain proceeding duly held at the Special Term of the Supreme Court of the State of New York, Part II, held in and for the County of New York in the County Courthouse, in the Borough of Manhattan, State of New York, on, to wit, the 18th day of February, 1938, plaintiff recovered judgment against the said defendant, a duly exemplified copy of which is annexed hereto marked Exhibit "A", and hereby made a part hereof by this reference.

5. That the said judgment has in no wise been vacated, reversed or modified, and that no appeal is pending therefrom.

[fol. 2] 6. That no payments have been made on account of the said judgment, and the full amount thereof is now long

overdue and owing, as shown in the Statement of Account annexed hereto marked Exhibit "B", hereby made a part hereof by this reference, which shows the sum of Twenty Five Thousand, Three Hundred and Eighty Two Dollars and Seventy Five Cents ($25,382.75), due and owing since February 19, 1938.

Wherefore, the plaintiff demands judgment against the defendant for the sum of Twenty Five Thousand, Three Hundred and Eighty Two Dollars and Seventy Five Cents ($25,382.75), interest and costs.

A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building.

[fol. 3] EXHIBIT "A" TO COMPLAINT

Certificates to following exhibits paper omitted in printing.

[fol. 4] At a Special Term, Part II, of the Supreme Court of the State of New York, held in and for the County of New York at the County Court House, in the Borough of Manhattan, City of New York, on the 18 day of February, 1938.

Present: Hon. Aaron J. Levy, Justice.

19505

GRACE H. GRIFFIN, Plaintiff,

against

WILLIAM H. GRIFFIN, Defendant

On reading and filing the annexed affidavit of Grace H. Griffin duly sworn to the 16th day of February, 1938, and upon all the pleadings and proceedings heretofore had herein, and on motion of Louis Stark, attorney for the plaintiff, it is

Ordered that the plaintiff's motion to direct the Clerk of the County of New York to enter a money judgment in her favor and against the defendant for the arrears of alimony due and unpaid under the judgment of divorce be and it hereby is in all respects granted, and it is

Further Ordered that the plaintiff recover of the defendant the arrears of alimony with interest thereon, now due under said final judgment, as follows:

$18,493.64 due on October 25th, 1935, as found by an order of this Court entered February 25th, 1936, with interest on the same in the sum of $2589.11;
$3750.00 due since October 25th, 1935 to the date of this order, with interest on the same in the sum of $550.00; making a total of $25,382.75

and it is

Further Ordered that the Clerk of the County of New York be and he hereby is directed to docket said judgment [fol. 5] for the sum of $25,382.75, in favor of plaintiff Grace H. Griffin, residing at No. 131 East 93rd Street, New York, New York, and against the defendant William H. Griffin, of Washington, D. C., pursuant to the provisions of Section 538 of the Civil Practice Act, and that plaintiff have execution therefor.

Enter, A. J. L., J. S. C.

Filed Feb. 19, 1938, New York County, Clerk's Office.

[fols. 6-8] SUPREME COURT, NEW YORK COUNTY

GRACE H. GRIFFIN, Plaintiff,

against

WILLIAM H. GRIFFIN, Defendant

The plaintiff in the above entitled action having duly obtained a judgment of divorce against the defendant on June 24th, 1924, and further directing the defendant to pay to the plaintiff as alimony the sum of $4500.00 per year, and said judgment having been modified on December 9th, 1926, by reducing the alimony payable to plaintiff by the defendant to the sum of $3000.00 per year, payable $250.00 per month, and the plaintiff having moved for an order pursuant to Section 538 of the Civil Practice Act to direct the Clerk of the County of New York to enter a money judgment in favor of the plaintiff and against the defendant for the arrears of alimony due and unpaid in the sum of

$25,382.75, including interest, and this motion having come on regularly to be heard before Hon. Aaron J. Levy, Justice, at Special Term, Part II of the Supreme Court, and this motion having been granted, and judgment directed to be entered herein, by an order duly signed and entered on February 18th, 1938,

Now, on motion of Louis Stark, attorney for the plaintiff, it is

Ordered that the plaintiff residing at 131 E. 93rd Street, New York City, recover of the defendant William H. Griffin, of Washington, D. C., the sum of $22,243.64, with interest thereon in the sum of $3,139.11, making a total of $25,382.75, and that the plaintiff have execution therefor.

Dated, New York, February 23rd, 1938.

Archibald R. Watson, Clerk.

[fol. 9] At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 21st day of November, 1924.

Present: Hon. William Harman Black, Justice.

19505

28705—1923

GRACE H. GRIFFIN, Plaintiff,

against

WILLIAM H. GRIFFIN, Defendant

A motion on an order to show cause dated October 3, 1924, returnable at Special Term, Part I, of this Court on the 8th day of October, 1924, having been referred to me by the Justice Presiding at Special Term, Part I, of this court, on the 14th day of October, 1924, why the interlocutory judgment of divorce in the above-entitled action, bearing date the 24th day of June, 1924, should not be modified and the clause respecting the payment of alimony and the visitation of the defendant to his children interpreted,

Now, on reading and filing the said order to show cause dated October 3, 1924, the affidavit of the defendant, William H. Griffin, dated October 2, 1924, the affidavit of George G. Shiya, verified October 2, 1924, and the order to show

cause signed by Honorable William Harman Black, Justice of this court, dated October 1, 1924, the affidavit of William H. Griffin, verified October 1, 1924, the affidavit of Joseph Brill, verified October 1, 1924, and the exhibits annexed to said motion papers, and the affidavit of William H. Griffin, verified October —, 1924, all in support of the said application made by the defendant, and the affidavit of Grace H. Griffin, the plaintiff above named, verified October 10, 1924, and the exhibit annexed thereto, and the affidavit of Daisy Bonner, verified October 10, 1924, the affidavit of [fol. 10] Edgar A. Martin, verified October 10, 1924, and the exhibits annexed thereto, all in opposition to the application made by the defendant and in support of plaintiff's cross application for an order modifying the said interlocutory decree dated June 24, 1924, and for an interpretation of the provision therein contained respecting the payment of alimony and the visitation of the defendant to his children, and said motion having been decided by the Court without oral argument, and on filing the opinion of the Court,

Now, on motion of Warren Leslie, attorney for the plaintiff, it is hereby

Ordered, that the interlocutory judgment of divorce heretofore entered in the above-entitled action and bearing date the 24th day of June, 1924, be modified and resettled so as to read as follows:

At a Special Term of the Supreme Court of the State of New York, Part V thereof, held in and for the County of New York, at the County Court House, in said County, on the 24th day of June, 1924.

Present: Hon. William Harman Black, Justice.

28705—1923

GRACE H. GRIFFIN, Plaintiff,

against

WILLIAM H. GRIFFIN, Defendant

This action having regularly come on for trial and been heard before Honorable William Harman Black, one of the Justices of this court, without a jury, at Special Term, Part V, held on May 20, 21, 22, 23 and June 18, 1924, at the County Court House, in the Borough of Manhattan, City and State of New York, upon the pleadings and proceed-

ings herein; and the plaintiff having appeared by Battle, [fol. 11] Van Diver, Levy & Van Tine, her attorneys, George Gordon Battle, of counsel, and the defendant having appeared by William J. Cullen, his attorney, Nash Rockwood, of counsel; and the proofs of evidence of both parties having been duly taken on the questions of adultery, permanent alimony and custody of the children of the parties; and counsel for both plaintiff and defendant having been heard; and this Court having in writing made its Findings of Fact and Conclusions of Law wherein and whereby the Court finds that the counterclaim interposed by the defendant has not been established and that the material allegations of the complaint have been established, and that the plaintiff is entitled to a decree dismissing the counterclaim on the merits and dissolving the bonds of matrimony by reason of the defendant's adultery and finding also, that the defendant and plaintiff were married on the 28th day of November, 1906, that at the time of said marriage defendant was a resident of the State of New York, and ever since said marriage and the commencement of this action plaintiff and defendant have been, and still are, residents of the State of New York, and that the issue of said marriage is one daughter, Grace H. Griffin, born March 15, 1909, and one son, William Stuart Griffin, born August 30, 1917;

Now, on motion of Battle, Van Diver, Levy & Van Tine, attorneys for plaintiff, it is

Ordered, Adjudged and Decreed that three months after the filing and entry of the decision herein and the entry of this interlocutory judgment, this judgment shall become the final judgment as of course, in favor of the plaintiff, Grace H. Griffin, and against the defendant, William H. Griffin, dissolving the marriage relation heretofore existing between the parties hereto because of the adultery of the defendant, unless the Court shall otherwise order; and it is further

Ordered, Adjudged and Decreed, that the custody of said Grace H. Griffin and William Stuart Griffin, the children of the parties, be and the same are awarded to the plaintiff except that the defendant is to have the right to see his daughter at the Walnut Hill School, Natick, Massachusetts, while she is a student there, with no one else present, once every two weeks, and when she is not a student at said [fol. 12] school, then wherever she may be at a time and

place to be agreed upon between him and her, and in the event of a failure to agree, application may be made upon notice to this Court. The defendant is also to have the right to see his son, Stuart, once a week every Saturday or Sunday, as he may decide, between the hours of nine in the morning and five in the afternoon in the fall and winter, and between nine in the morning and six in the afternoon in the spring and summer without the presence of any one else except him and the son, and the son to be turned over to defendant at his mother's home in New York City, and returned to his mother's said home, or in lieu of this arrangement, then defendant at his option may see his son at such place as defendant sees fit without the presence of any one else except himself and his son, from two in the afternoon of each Saturday to five o'clock in the afternoon of each Sunday, the son to be turned over to defendant at his mother's home in this city and return to his mother's said home in New York City, and in case the mother is away for the summer the son is to be turned over to the defendant in the State of New York at the place where his mother resides and returned to her at the same place under the same conditions already provided, and it is further

Ordered, Adjudged and Decreed, that the defendant, William H. Griffin, shall pay to the plaintiff, Grace H. Griffin, for the support and maintenance of the said plaintiff and said children the sum of Four Thousand Five Hundred Dollars ($4,500) per annum, payable monthly in advance at the office of Warren Leslie, 2 Rector Street, attorney for the plaintiff; and said defendant, William H. Griffin, shall also pay the tuition and board of his daughter, Grace H. Griffin, at Walnut Hill School, Natick, Mass., in the sum of Fifteen Hundred Dollars ($1,500) per annum, which said sum shall not go as a credit upon the alimony provided in this decree, with the proviso, however, that if the said daughter, Grace H. Griffin, refuses to see her father once every two weeks from the date hereof, the defendant shall not thereafter be required to pay the balance over Eight Hundred Dollars ($800), or any other balance that may be due to the Walnut Hill School, Natick, Mass., without the further order of this Court; and it is further

[fol. 13] Ordered, Adjudged and Decreed that the son, Stuart, shall attend Friends School in Brooklyn, or such other school as may hereafter be agreed upon by the parties or directed by the Court, the tuition whereof to be paid by

the defendant in the sum of $275.00 per year, which sum shall not be credited to the defendant upon the alimony in this decree, with the proviso that if there is any attempt upon the part of any one at the said Friends School in Brooklyn to prejudice Stuart against his father, application may be made by the defendant for an order directing Stuart to attend some other school; and it is further

Ordered, Adjudged and Decreed, that the defendant shall pay up all alimony awarded under the decree of this Court bearing date June 24, 1924, to the date of this modified decree to wit $1,875 and plaintiff is not required to permit the defendant to see his children as provided by the original decree and this modified decree until such alimony is paid. As to the other alimony due prior to the 24th day of June, 1924, the plaintiff may take such steps to enforce payment thereof as she may be advised, there being nothing contained in this modified decree passing upon the right of the plaintiff to collect the same by directing the defendant to make payment thereof; and it is further

Ordered, Adjudged and Decreed, that the application of the defendant, William H. Griffin, to pay the alimony provided by the decree of this Court, dated June 24, 1924, as also herein provided, and of the plaintiff to permit defendant to see the children are reciprocal, but the alimony awarded by the decree of this Court, dated June 24, 1924, must be paid first and then the plaintiff must permit the defendant to see the children in accordance with this modified decree, and it is further

Ordered, Adjudged and Decreed, that the foregoing provisions respecting custody are to become immediately effective and shall supersede the provisions in any orders respecting custody heretofore made in this action; and it is further

[fol. 14] Ordered, Adjudged and Decreed, that the foregoing provisions respecting alimony are to become immediately effective and shall supersede the provisions respecting alimony heretofore made in this action; and it is further

Ordered, Adjudged and Decreed, that the foregoing provisions of this modified interlocutory judgment respecting custody and amount of alimony may, at any time upon application to this Court by either party in the manner provided by law, be annulled, varied and modified by this Court.

Enter, W. H. B., J. S. C.; James A. Donegan, Clerk.

O.K. W. S. Endorsed. Filed Nov. 21, 1924.

[fol. 15] SUPREME COURT, NEW YORK COUNTY

19505

28705—1923

GRACE H. GRIFFIN, Plaintiff,

against

WILLIAM H. GRIFFIN, Defendant

The above named defendant, William H. Griffin, having appealed to the Appellate Division of the Supreme Court, First Judicial Department, from parts of the interlocutory judgment of the Supreme Court entered in the office of the Clerk of the County of New York on or about the 24th day of June, 1924, as modified by interlocutory judgment entered in said Clerk's office on the 25th day of November, 1924, and the said Appellate Division having rendered its decision modifying said judgment by reducing the amount which the defendant is directed to pay to the plaintiff for the support and maintenance of the said plaintiff and the children to the sum of Three Thousand Dollars ($3,000), in addition to the payment for the education of the said children as provided in said judgment appealed from, and, further, so as to provide that the defendant may have the custody of his son as now provided for in the modified interlocutory judgment from three o'clock in the afternoon of each Friday until eleven o'clock each Monday morning during the period of the son's Christmas vacation and of the son's summer vacation; and having further ordered, adjudged and decreed that the judgment so appealed from be affirmed as so modified without costs to either party upon said appeal; and a certified copy of the order of said Appellate Division having been duly filed, together with the record, in the office of the Clerk of the County of New York;

Now, on motion of William J. Cullen, Esq., Attorney for the defendant, it is

[fols. 16-17] Ordered, Adjudged and Decreed that the said judgment so appealed from be, and the same hereby is, modified by reducing the amount which the defendant is directed to pay to the plaintiff for the support and maintenance of said plaintiff and the children to the sum of Three Thousand Dollars ($3,000) per annum, payable

monthly in advance at the office of plaintiff's counsel, in addition to the payments for the education of the said children as now provided for; and further modified so as to provide that the defendant may have the custody of his son as now provided for in the modified interlocutory judgment from three o'clock in the afternoon on each Friday until eleven o'clock each Monday morning during the period of his son's Christmas Vacation and of the son's summer vacation; and that as so modified the said judgment be and the same hereby is affirmed.

Judgment signed and entered this 9th day of December, 1926.

William T. Collins, Clerk.

[fol. 18] EXHIBIT "B" TO COMPLAINT

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Civil Action No. 19505

GRACE H. GRIFFIN, 131 E. 93rd Street, New York City, N. Y., Plaintiff,

vs.

WILLIAM H. GRIFFIN, Apartment 212, 4801 Connecticut Ave., N. W., Washington, D. C., Defendant

STATEMENT OF ACCOUNT

For moneys due and owing from the defendant to the plaintiff on a judgment rendered at the Special Term of the Supreme Court of the State of New York, Part II, held in and for the County of New York, in the County Courthouse in the Borough of Manhattan, State of New York, wherein judgment was rendered in favor of the plaintiff and against the defendant, $25,382.75 and costs.

[fol. 19] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ANSWER TO COMPLAINT ON FOREIGN JUDGMENT—Filed June 1, 1943

For a first full and complete defense to the alleged cause of action set forth in the complaint herein, defendant

I. Denies any knowledge or information sufficient to form a belief, and therefore denies, each and every allegation in paragraphs 1, 4, 5 and 6 of said complaint.

For a second full and complete defense to the alleged cause of action set forth in the complaint herein, defendant

II. Alleges that the so-called judgment dated Feb. 18, 1938, attached to the complaint herein as Exhibit A, and which is the sole basis of this suit, if any such in fact and in law exists, is null and void for lack of jurisdiction of said Court in New York to render such judgment, in that, among other fundamental defects, defendant was not given any notice of any application for any such judgment or opportunity to be heard to contest the relief asked for therein, including the amount to be inserted therein as due plaintiff from defendant; and was not served with any paper purporting to be a copy of any such judgment, prior to the service of the paper marked Exhibit A attached to the complaint herein; and said proceedings were wholly without due process and unconstitutional as contrary to the pro-[fols. 20-57] visions of the Constitution of the United States. Said Exhibit A is null and void on its face in that it contains no recital of service of process upon, or of notice to, or of appearance by, defendant in the application for or presentation of said document to the Court in New York for signature as a judgment. Defendant in fact had no knowledge until shortly prior to the service of the complaint herein that any such judgment, or purported judgment, had been made and entered, or so purported; and defendant denies that the amount claimed therein to be due from defendant to plaintiff is in fact, in law or in equity and good conscience so due.

For a third full and complete defense to the alleged cause of action set forth in the complaint herein, defendant

III. Alleges that if any such judgment as the document marked Exhibit A attached to the complaint herein, has in fact been made and entered in the Borough of Manhattan, County of New York, State of New York, the same, and each and every part thereof, and particularly the amount of alleged indebtedness inserted therein, is absolutely null and void and unenforcible in this Court, and not entitled to full faith and credit under the Constitution of the United States, because of gross fraud in its incidents, and in its procurement, and in its making and entry, and in its monetary contents, and in the amount claimed to be due and owing under it, because of the following facts and circumstances, and for the following reasons, among others, and specific enumeration of which is not intended to exclude further proof of such fraud on the trial of this action.

[fol. 58] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

INTERROGATORIES OF DEFENDANT—Filed February 10, 1944

To Grace H. Griffin, 131 East 93rd Street, New York City.

You are required to answer the following Interrogatories, under oath, and mail them to the undersigned, within the time provided in Rule 33 of the Rules of Civil Procedure of this Court, all in accordance with the provisions of said Rule 33, and should you neglect or refuse so to do, judgment may be entered against you for an amount sufficient to pay the defendant's damages and costs of suit.

(Where ample space for any answer by you is not provided herein, write your answer on a separate page or pages, which initial and attach to these Interrogatories.)

William H. Griffin, Defendant pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

Interrogatories

1. Are you the plaintiff in this action, and also the plaintiff in a divorce suit in the New York County Supreme Court, No. 28705-1923?

2. (a) Where do you now reside?
(b) With whom do you now reside, or who now resides with you?
(c) Since when has each such person resided with you?

3. (a) What amount of rent, and/or board, and/or compensation, and/or contribution, does each such person make or pay to you?
(b) Since when has each such person made such payment to you, or for your account, or made any larger or lesser payment, with a statement of the amount of each payment?

[fol. 59] 4. (a) Prior to November 28, 1906, where did you reside, and for what period, giving the date such residence commenced, or the number of years and months of its duration?
(b) For what part of such period did you reside with your father and your mother together?
(c) If you did not so reside with them living together during the entire period before November 1906, when did that condition change and in what manner?

5. (a) Is your father still living; and if so, where?
(b) What is the date when you last saw your father and/or had any direct contact or communication with him?
(c) What opinion of your father have you entertained, and/or have you expressed to defendant, since the date given in your answer to the last preceding Interrogatory, and/or since November 1906?
(d) Do you claim, or have you claimed to defendant, direct blood descent from the Royal House of Stuart, and particularly from King Charles I of England and Scotland?
(e) If so, through which parent do you claim such descent, your father or your mother? Which parent have you mentioned to defendant in that connection?

6. (a) Is your mother still living?
(b) During the period that you resided with her before November 1906 as stated in your answer to above Inter-

rogatory 4, what was her occupation and source of livelihood, stating separately each occupation and source?

(c) What contribution did you make during your entire period of residence with her to her occupation and/or to her support in money and/or personal service? Give details and amounts.

(d) What was your source of support during all of said period, stating each and all if more than one?

7. (a) Did you during months and years prior to November 1906 maintain close social and friendly relations with one Florence Huberwald, a so-called "free thinker" in religious matters, who denied the divinity of Christ, and who was not affiliated with any church or established religious organization?

(b) If you deny any detail stated in the last preceding Interrogatory, what were the religious beliefs of said Florence Huberwald known to you, and to what church or established religious organization did she belong?

(c) For what period of time, stated in months and/or years, after you took the marriage vows with defendant in November 1906, did you fail or refuse to attend, or neglect, or refrain from attending the religious service of any Christian church?

[fol. 60] (d) In what year did you first seek affiliation with any Christian church? To which church and to what person in it did you then go? Were you then admitted to membership? Or were you rejected because of the views which you then asserted? Or, if not either, what did then result?

8. (a) In or about what month and year was your first child by defendant conceived? And is that child still living?

(b) In or about what month and year was your second child by defendant conceived? And is that child still living?

(c) Were you pregnant by defendant at any other time between November 1906 and August 1917? If so, did such pregnancy result in the birth of a child? If not, what was the outcome of such pregnancy?

(d) Did you at any time in 1917 or in any year thereafter have sexual intercourse with defendant? Or did you persistently and continuously refuse to have such relation after 1917? If you answer asserting such relation, when and where did it occur?

9. (a) Did disputes arise between you and defendant over that aspect of the marital relation, and/or religious

views, and/or child culture and attitude toward parents, and/or social activities, and/or living expenses?

(b) Did you at any time modify, or compromise upon, any single attitude or view held by you? If you claim the affirmative, what attitude or view did you modify at any time from 1906 to the present date, and when did you modify it?

(c) Did defendant repeatedly from 1917 through 1924 offer you your freedom and release from the marital relation on an agreement for equal division of the custody of the two children, all year maintenance of a home for the children, and separate maintenance payments to you?

(d) Did you at all times during said period refuse to give defendant his freedom and release from the marital relation except on his agreement to surrender all rights in the children, leave you in sole enjoyment of a home that had cost him around fifty thousand dollars, and pay you twenty-five thousand dollars a year in addition? What were your demands then? (See reverse)

(e) Was the maintenance award that you ultimately secured in the divorce suit which you started in 1923, and in which you presented by able counsel your just legal claims on defendant according to his actual income, the somewhat smaller sum of three thousand dollars a year for the support of yourself and the two children and with defendant remaining in occupancy of the fifty thousand dollar home?

10. (a) Were you dissatisfied with such shrinkage in your expectations? How did you evidence such dissatisfaction? By refusing to enter the final decree in the divorce suit until compelled to do so as the alternative to loss of the alimony actually allowed?

[fol. 61] By retaining a new attorney? By a persistent and continuous course of villification of defendant and resort to every device in your power to injure him personally and professionally and financially and to deprive him of all enjoyment of the companionship and respect of the two children and of the custody rights granted to him by the final decree in the divorce suit? By refusing him all access to each child during the pendency of the divorce suit?

(b) Did you also seek to injure him by causing the publication of scurrilous and libelous reports about him, and then anonymously circulating or causing to be circulated

such reports to his clients, social acquaintances and prospective clients, and personal friends and relatives?

(c) Did you at any time state, in words or in substance and effect, that you would never let up on defendant until you had accomplished his complete ruin?

11. (a) Shortly following the conclusion of the divorce suit trial did you terminate the retainer of the attorney of excellent reputation who had served you on the trial, and retain a new attorney, one Warren Leslie?

(b) Were you advised at the time, or did you then know, that said Leslie was an Irish-Catholic, influential in the political group commonly known as Tammany Hall, stood well with the Supreme Court Justices in New York County, many of whom were also Irish Catholics, and a majority of whom owed their position to the support of said Tammany Hall group, but that he had the reputation of being utterly unscrupulous in the technique employed by him in divorce cases, particularly a suit involving a professional man resident in Staten Island?

12. In the interest of a full and complete disclosure of all facts pertinent in this suit, do you now release said Leslie from all his obligations to you of professional confidence, and waive the confidential relationship between you and him as client and attorney, and agree that he may testify freely to any and all conversations and/or dealings between you and him which are material and pertinent in this suit? Or do you insist on sealing his lips and suppressing any such material and pertinent matter?

13. Following the retainer of said Leslie,

(a) How many times did you refuse to permit defendant to have the weekend custody of his son allowed by the final divorce decree on the assertion that he was too ill or too nervous to leave you?

(b) What charges of moral turpitude did you and said Leslie concoct, and/or cause to be published, against defendant in your effort to defeat or reduce the rights of custody of the son granted defendant by the final divorce decree?

(c) Did you succeed in securing at any time a favorable decision from the Court on any of your charges of moral turpitude against defendant, or any reduction or cancella-

tion of said custody provisions? Or do they remain today exactly as they were fixed in 1926?

(d) Did your failure in the Court deter you from taking into your own hands the fixing of the two children's relations to defendant?

[fol. 62] (e) Under your guidance and control, what has been the attitude of the daughter toward defendant? And when was the last date that she voluntarily had any contact or communication with him?

(f) Did you suggest to her to base her termination of all communication with her father on the sole fact that he had remarried, wholly disregarding the fact that the lady was a social friend invited by you to your own ceremony, was a close friend of your own mother and respected and loved by her, and had absolutely no connection with your own marital failure or your divorce?

(g) Under your guidance and control and pressure, what has been the attitude of the son toward defendant? Despite your abortive attacks in court on defendant, his relations with his son were cordial and close while defendant lived in New York and could exercise his custody rights, were they not? But after his departure for Europe in 1929 and termination of residence in New York, have you continuously brought pressure upon him to cease all communication and contact with his father? When was the last date that the son voluntarily had any contact or communication with his father?

14. Despite the attitude that you have influenced the two children to take toward their father, and your continuous efforts over several years completely to ruin him, do you still urge any claim upon him in equity and good conscience arising out of the former marital relation with its bilateral and reciprocal obligations? Or do you regard the former relationship as imposing obligations only on defendant and none at all on you? Are you aspiring to out-Shylock Shylock in exacting the full letter of your bond?

15. Who first conceived, and/or suggested to you, the idea of trying to have defendant indicted by a grand jury for abandonment on January 3, 1929, when he sailed for Europe, of his son then under 16 years of age?

16. Were you aware that such an indictment charged a felony under New York law which subjected defendant to

a possible loss of his rights of citizenship, of his license to practice law in New York, and of his livelihood and means of meeting any monetary obligation to you from such source?

17. Did your knowledge of such possible consequences deter you from lending your active encouragement and aid to such effort? Or, did you instead appear as a complaining witness before a grand jury for New York County in or about December 1929 and testify under oath in substance and effect that when defendant departed from New York on January 3, 1929, he left his son then 12 years old in destitute circumstances and failed, omitted and neglected to provide for said son any food, clothing or shelter whatsoever? Name all persons then present beyond jurors?

18. Precisely, what was your testimony under oath before said grand jury in any way concerning said defendant and said son? Or, if you now assert lack of memory of all the details of such testimony, state all the details that you can now remember, and conclude your answer to this Interroga- [fol. 63] tory with the statement (made with the full knowledge that you are now under oath to tell the whole truth and nothing but the truth) that you have just stated every detail of your testimony before said grand jury that you can now remember?

19. Were you aware at the time you gave such testimony that any statement by you that said son was left by defendant on January 3, 1929, in destitute circumstances and without any food, clothing or shelter whatsoever being provided for said son on said date by said defendant was knowingly false constituted a felony under the law of New York subjecting you to a possible sentence to a term of imprisonment in a New York penitentiary?

20. What concern, if any, did you have on that occasion respecting the truth or falsity of any testimony that you gave on said occasion so long as it brought the indictment of said defendant?

21. (a) Had you received from said defendant through your attorney on or about December 24, 1928, by check of defendant which you endorsed and collected, the sum of $250.?

(b) Was $250. the amount of monthly instalment of alimony provided by the final decree of divorce between you and said defendant then in full force and effect to provide you, a minor daughter, and said minor son with food, clothing and shelter?

(c) Was that particular payment of $250. on or about December 24, 1928, the monthly payment then currently due in advance for the month beginning December 24, 1928, and constituting payment in full to January 24, 1929, of all obligation of said defendant as determined by said divorce decree to provide you and said minor son with food, clothing and shelter up to, on and after said January 3, 1929?

(d) Where then was any truth, or basis of truth, in your testimony before said grand jury that on said January 3, 1943, defendant left his said son in destitute circumstances without providing him with any food, clothing or shelter whatsoever?

22. (a) Had you on or prior to January 3, 1929, become informed, by written word from defendant to said son in your custody and/or any other medium, that defendant intended to sail for Europe on January 3, 1929, from a specified pier, by a specified steamship, and desired that said son be permitted to come to said pier to say goodbye to his father?

(b) Did you refuse your permission for that purpose, and keep said son from said pier and from saying goodbye to his father, for the asserted reason that defendant intended to kidnap, and would have kidnapped, said son on such occasion and taken him to Europe?

(c) When did you first receive the suggestion, and from whom, that defendant's intention on January 3, 1929, was not to kidnap the son but to abandon him.

23. (a) Were you aware in December 1929 when you were [fol. 64] testifying before said grand jury that on January 3, 1929, defendant had not provided any food, clothing or shelter for said son and had abandoned him in destitute circumstances, or giving any other testimony on the subject, that you had readily available to you then, and had had readily available to you continuously for sometime theretofore running back to a time prior to said January 3, 1929, an additional sum belonging to said defendant exceeding $4,000 in cash?

(b) Had you through your own attitude and course of conduct prior to January 3, 1929, compelled said defendant to deposit that sum in cash with a New York City or County official prior to said January 3, 1929, without power to withdraw it during your life except with your consent?

(c) Were you aware in December 1929 when you so testified before said grand jury that said defendant had for years maintained in a certain bank known to you an account in his and your joint name on which you for years drew your own personal checks?

(d) Was the check for $250. received by you on or about December 24, 1928, and a check received by you subsequent to said January 3, 1929, as well as many checks received by you previously, drawn by said defendant on another bank in New York City known to you, in which defendant kept his professional account?

(e) Did you at a time or times of your own selection, or your attorney's selection, subsequent to January 3, 1929, request or authorize your attorney to collect any funds of defendant available to you?

(f) Did he in fact thereupon collect for your account and pay over to you, or account to you for, a total of $5,432., or any other sum or sums, secured from all of the three sources above mentioned in subsections (a), (c) and (d) of this Interrogatory?

(g) Did you thereupon or thereafter apply any part of such collection and payment to you to provide food, clothing and shelter for said son either directly or in reimbursement of prior expenditures by or through you for such provision?

24. (a) In fact and in truth, has said son been at any time for as much as a single day from the day of his birth to this day without any food, clothing or shelter whatsoever? If so, when and for what duration, and from what cause?

(b) (Transpose from reverse side.)

25. (a) Prior to your appearance as a witness before said grand jury in December 1929, what talks did you have on the subject of such appearance by you and on the substance of the testimony to be given by you before said grand jury, with your attorney, said Warren Leslie, and/or anyone in the office of the District Attorney of New York County?

(b) With what person and/or persons in said office did you have any such talks, and what in the fullest detail you can now state was said by you to any such person and/or persons and by any such person or persons to you, and/or by said Leslie to any such person or persons and by any [fol. 65] such person or persons to said Leslie in your presence, on the subjects mentioned in the preceding subsection of this Interrogatory?

(c) Specifically, did you, and/or said Leslie in your presence, mention to any such person or persons, and particularly to one Harold Hastings, an assistant district attorney in said office, any one or more or all of the facts, and if so which referred to in the preceding Interrogatories 21(a)-(c), 23(a)-(b), and 24, namely, that you had received on or about December 24, 1928, payment in full of said defendant's obligation to provide food, clothing and shelter for said son to January 24, 1929, so that said defendant had not on January 3, 1929, left his son in destitute circumstances; that you had readily available at all times during 1929 an additional sum belonging to said defendant exceeding $4,000. which you could collect and expend to provide food, clothing and shelter for said son; and that said son was not at any time during 1929, or at any other time, in destitute circumstances or in want of food, clothing and shelter?

(d) What explanation do you now offer for your neglect or failure to mention any one or more or all of said facts to any person in said District Attorney's office, and particularly said Harold Hastings, prior to your testimony under oath before said grand jury?

(e) Did you then have a design and purpose to secure the indictment of said defendant either by giving a false account and/or suppressing a complete and true account of the real facts in disregard of your oath to state the truth, the whole truth, and nothing but the truth, and by such means, or other means, to create a false and erroneous understanding of the facts by said grand jury, and thereby influence them to return the indictment for a felony desired by you against said defendant?

26. Reverting to the collection of $5,432. mentioned in the preceding Interrogatory 23(f)-(g),

(a) For what purpose or purposes did you, or your attorney with your knowledge, use said collection of $5,432.,

or any part thereof, other than to provide for yourself and/or said son?

(b) Specifically, did you, or your attorney with your knowledge, use any part of said sum to pay, or to reimburse any payment to, one Sullivan to trail and shadow said defendant in Europe and/or the United States and to report to you and/or your attorney the doings of said defendant? If so, what part?

(c) What were the terms of any arrangement with said Sullivan, and what were the instructions given him for the performance of his job, to your knowledge, all stated in the fullest possible detail? And who made such arrangement with, and gave such instructions to, said Sullivan?

(d) What was the experience and qualification of said Sullivan for said job?

27. (a) Over what period of time was said Sullivan engaged in trailing and shadowing and reporting on said defendant? And from what places did he send his reports on such sleuthing?

[fol. 66] (b) Specifically, did he send any reports from Paris, France, containing the name or names and/or addresses of any person or persons as being a client of defendant in Paris, France, or elsewhere in Europe?

(c) If so, now state each name and address so reported?

(d) Did you at any time thereafter communicate in any way, directly or indirectly, with any such person? If so, here state to the fullest extent possible the substance of each and every such communication?

(e) Did you retain a copy of any such communication? If so, attach a true copy thereof hereto with appropriate identification.

(f) Did you receive any reply to any such communication from you? If so, attach a true copy thereof hereto with appropriate identification. Or, if you now state under your oath that such reply has been lost and is no longer in your possession or under your control and its recovery is impossible, state now to the fullest extent possible the substance of each and every such reply.

(g) Have you now produced a true copy of each and every such communication from you, and of each and every such reply to you, or testified to the substance of each and every such communication and reply to the fullest extent possible?

28. (a) Did you receive from any other source than said Sullivan the name or names of any person or persons as being a client of defendant in or about Paris, France?

(b) If so, now state each name so received by you, with address also received; and the name of each person sending you any such name?

(c) Specifically, were you given the name of one T. H. McCarthy; and if so, at about what date, and by whom?

(d) Did you at any time thereafter communicate in any way, directly or indirectly, with said McCarthy?

(e) Did you receive from him any reply to any such communication?

(f) If in answer to the preceding Interrogatories 27(d)-(g) you have not already supplied a true copy of each and every such communication and reply, or stated the reason for your omission, and have not stated to the fullest extent possible the substance of each and every such communication and reply, please do so now as called for by such Interrogatories?

29. By what means did you first learn of defendant's return to the United States late in 1932 and of his presence shortly thereafter in Asheville, North Carolina? From said Sullivan still shadowing defendant for you, or from another source? If another source, name it and the person informing you?

30. (a) Were you advised shortly thereafter that defend-
[fol. 67] ant had been arrested in Asheville and held under the high bond of $5,000., until a prominent citizen of that City volunteered to go his surety on such excessive bond, and further advised that your attorney Leslie and his associate Martin and your sleuth Sullivan were busily engaged on securing defendant's extradition to New York?

(b) Did you for use in such extradition proceeding, or for any other purpose, sign and swear to an affidavit in which you admitted the collection and receipt by you of the sum of $5,432 mentioned in the preceding Interrogatory 23(f)?

(c) Who prepared such affidavit for you? And who asked you to sign it?

31. (a) Were you subsequently advised that the Court in Asheville decided that defendant was being held unlawfully and discharged him from arrest? And were you still later

advised that defendant had voluntarily returned to New York and submitted to arrest in order to dispose in New York of the indictment itself?

(b) On the trial of defendant under said indictment before a judge and jury in New York, did you appear and testify as the sole witness for the prosecution?

(c) Did you on cross examination on such trial admit the collection and receipt by you in 1930 and/or 1931 of the sum of $5,432 mentioned in the preceding Interrogatory 23(f) and the retention of a substantial part of such collection by your attorney Leslie for other purposes than to provide food, clothing and shelter for the minor son who you swore had been left destitute in 1929?

(d) Were you disappointed and aggrieved when at the close of your testimony, the judge, without even calling upon defendant to testify, directed the jury to find him Not Guilty of the charge in the indictment that you had influenced the grand jury to return? Or did you have another card up your sleeve at that particular time?

(e) Specifically, had you, with advance knowledge of the date that such trial would be held and when defendant would probably appear, yourself gone into the New York Domestic Relations Court and on a substantially similar sworn statement of the son's destitute circumstances caused to be issued from that Court a warrant for defendant's arrest while he was thus voluntarily in New York solely for the purpose of trial on the indictment?

(f) And to your knowledge and information, was defendant leaving the courtroom acquitted of the charge made in December 1929 by you immediately arrested on the renewal charge that you had just previously made in the Domestic Relations Court?

(g) And were you thereafter advised that defendant took appropriate steps to avoid such further and continuing abuse of judicial and criminal process by you and your attorneys?

[fol. 68] (h) And did you thereafter continue to harass and to injure defendant, both by seducing professionally one Conn Cohalan who was then purporting to be defendant's attorney, and by instigating charges against defendant in his professional capacity designed to deprive him of his means of livelihood as a lawyer?

32. (a) Specifically, did you at different times between 1933 and 1939, while the litigation and controversies be-

tween you and defendant were still in full force and effect, communicate with said Conn Cohalan directly in the absence of defendant and without his knowledge at the time or authorization at any time?

(b) Do you know that during the same period your attorney entertained said Conn Cohalan with intoxicating drinks at your attorney's social club on several occasions all in the absence of defendant and without his knowledge at the time or authorization at any time?

(c) Do you know that during the same period a daughter of your attorney Leslie married a brother of said Conn Cohalan?

(d) Do you know whether or not said Conn Cohalan during said period in several serious ways injurious to defendant proved faithless to his trust and violated his obligations and relations as purported attorney for defendant?

33. (a) What is the present age of your daughter? 34 years?

(b) Has she at any time since coming of age been gainfully employed? If so, for what periods? Is she now so employed?

(c) Have you ever received financial support from your daughter? If so, for what periods? Are you receiving any such support at this time? In what amount?

34. (a) What is the present age of your son? 26 years?

(b) Has he at any time since coming of age been gainfully employed? If so, for what periods? Is he now so employed?

(c) Have you ever received financial support from your son? If so, for what periods? Are you receiving any such support at this time? In what amount?

35. (a) Has there ever been a period in your life when you have not been supported financially by someone other than yourself?

(b) Except for a brief period when you sold insurance, have you ever at any time in your life supported yourself financially, wholly or partly, by your own personal work and earnings? If so, during what period, and at what kind of work?

[fol. 69] (c) Have you always regarded it as your privilege and right to be financially supported by others—particularly by your mother and brother, by defendant with whom you went through a marriage ceremony, and by your

children—regardless of their privileges and rights, and without any obligation to support yourself by your own effort and earnings? In short, is it your philosophy that the world owes you a living without any labor on your part? Did you not make an announcement of such philosophy to defendant between November 1906 and September 1924?

(d) Have you by any such attitude and/or philosophy hindered or prevented your brother from ever marrying? Has he ever married? And what is his present age?

(e) Have you by any such attitude or philosophy prevented, hindered, or delayed, and/or are you now preventing, hindering or delaying, the marriage of either of your children and the building by either or both of them of a separate and independent home? Has either of your children ever married? If so, when?

(f) In short, have you ever at any time in your entire life been other than a sponger and a parasite?

36. (a) Have you received any suggestions or coaching or other aid in preparing and formulating your Answers to the foregoing Interrogatories, or any one or more of such Answers? If so, what suggestion or coaching or other aid, and from whom?

(b) Specifically, have you consulted with any attorney or attorneys on the subject? Has any such suggestion or coaching or other aid been given you by any attorney?

(c) Is each and every such Answer given by you the product solely and exclusively of your own independent and unaided determination, without any assistance or suggestion whatever from any other source?

(d) Does that Answer mean, not only that you have included nothing, but also that you have omitted nothing, in any Answer by you to the above interrogatories, at the instance of any other person?

The foregoing Interrogatories under and pursuant to Federal Rule of Civil Procedure 33 was served upon plaintiff herein by mailing a copy of the same to A. M. Goldstein, Attorney for Plaintiff, at 325-326 Bond Building, Washington 5, D. C., pursuant to Federal Rule of Civil Procedure 5(b), this 29th day of January, 1944, in an envelope with proper postage affixed, and bearing my return address in the upper left hand corner.

William H. Griffin, Petitioner pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

[fol. 70] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

MOTION FOR SUMMARY JUDGMENT—Filed February 15, 1944

Comes now the plaintiff by her attorney, and moves the Court for Summary Judgment in her favor upon her Complaint, supporting Affidavits and Exhibits annexed thereto, as to all the matters complained of, pursuant to Rule No. 56 of the Federal Rules of Civil Procedure, and for reasons therefor, states as follows:

1. The record in this case shows that no genuine issue exists as to any material fact.

2. The Complaint filed in this action is a suit on a foreign judgment rendered in the Supreme Court of New York County, in the State of New York, February 23, 1938. That said Judgment is duly authenticated, pursuant to 28 U. S. C. A., section 687. Article 4, Sec. 1, U. S. C. A., Constitution Article 4, Sec. 1, requires that judicial proceedings in each State shall be given full faith and credit in Courts of every other State. See *Davis* vs. *Davis*, 305 U. S. 32; 59 S. Ct. page 3, see page 6, paragraphs (1, 2). The latest decision of the Supreme Court of the United States on the subject, is the case of *Williams vs. State of North Carolina*, 315 U. S. 795; 63 S. Ct. page 207, 87 L. ed. —, decided December 21, 1942. See also the case of *Loughran vs. Loughran*, 292 U. S. 216; 54 S. Ct. 684; 78 L. ed. 1219; reversing our Court of Appeals in 62 App. D. C. 262.

3. Opposed to the complete record, as shown by plaintiff's complaint and exhibits, there is the unsupported and unverified allegation, 2nd and 3rd paragraphs of defendant's answer, that the Judgment sued upon in this case, is null and void because the defendant "was not given any [fol. 71] notice of any application for any such Judgment, or opportunity to be heard to contest the relief asked for therein, including the amount to be inserted therein, from the defendant."

It is to be observed, that nowhere in the defendant's Answer, does he contradict the fact that the plaintiff obtained

a divorce from the defendant in New York on June 24, 1924, and that the New York Court had jurisdiction of the parties and the subject matter.

4. It is also to be observed that thereafter, the Supreme Court of New York County, still having jurisdiction of the subject matter and the parties, as shown by the Exhibits annexed to the Complaint, appointed a Referee to make a report, and on January 7, 1936, the Referee so appointed made his report, and Judge Cotillo of the Supreme Court of New York County, granted an Order, confirming the Referee's report. The defendant appeared personally with counsel before said Referee, and nowhere in his Answer is this denied.

5. It is admitted, as stated heretofore, that the defendant was not given any notice of any application for the Judgment, nor was any service of process made upon him after the Hearing held before the Referee appointed by the Supreme Court of New York County, January 7, 1936, wherein the defendant appeared personally. However, the Supreme Court of the State of New York of New York County, did enter said Order, pursuant to the provisions of the New York Civil Practice Act of the State of New York, then in full force and effect. It is also admitted that the defendant was not given notice of the application for said Judgment after January 7, 1936.

6. There is annexed hereto, and hereby made a part hereof, the sworn affidavit of Louis Stark, Esquire, a practicing attorney in good standing in the State of New York, and annexed to said Affidavit are certain exhibits duly authenticated by the Department of State of the State of New York, wherein there is set forth Section 538 "Power of Courts respecting Docket," and also the law of March 21, 1940, which subsequently changed the former Civil Practice Act, Section 538, existing at the time Judgment against the defendant was taken.

[fol. 72] 7. The fraud which the defendant alleges in paragraphs 2 and 3 of his Answer, is based on the fact as stated heretofore that the defendant had no knowledge that the Judgment had been rendered pursuant to the New York Civil Practice Act, sec. 538, as referred to heretofore, and that said Act permitted the plaintiff in the instant case, to obtain an Order from the Supreme Court of New

York County, in which the divorce judgment was originally rendered, directing the entry of Judgment for unpaid alimony, *without notice to the defendant*. A case almost in point, covering this very question, is the case of *Thayer vs. Thayer*, 145 App. Div. 268, 129 N. Y. Supp. 1035. See also the case of *Durlacher vs. Durlacher*, 173 Misc. 329; 17 N. Y. Supp. (2nd) 643 (1940).

It is respectfully submitted that the Courts of the District of Columbia are bound equally with Courts of the States to observe the command of the full faith and credit clause, wherever applicable, and that the defendant has failed to state any matters of defense to the Complaint in this action.

It is also respectfully submitted, that even if this were not a Judgment of a Court of record of the State of New York, but a valid decree for past due alimony, yet the full faith and credit clause of the Constitution would require our Courts to give it full faith and credit. See *Sistare vs. Sistare*, 218 U. S. 1, 54 L. ed. 905. Another interesting case on this subject is *Biewend vs. Biewend*, 17 Cal. (2d) 117; 109 P. (2nd) 701, 132 A. L. R. 1264, 1266, decided by the California Supreme Court January 28, 1941, which cites the Sistare case as aforesaid. See also the case of *Hellmuth vs. Hellmuth*, 69 App. D. C. 64, 98 Fed. (2d) 431, decided by our Court of Appeals May 23, 1938; see head-note 1. See the case of *Davis vs. Davis*, 29 App. D. C. 258, 262, wherein our Court of Appeals held:

> "The decree of the court of a State having jurisdiction of subject-matter and parties, awarding divorce and, incidentally, alimony, is entitled to the same faith and credit in other States that it has in the State where rendered; and an unconditional and final award of alimony, when the same remains unpaid, may be enforced by appropriate proceedings in other States."

[fol. 73] Under this state of the record, it is respectfully submitted that no genuine issue exists as to any material fact, and that the Answer of the defendant to the plaintiff's complaint with authenticated decree and Judgment annexed thereto, does not set forth any valid defenses; and that plaintiff is entitled to Judgment as a matter of law.

A. M. Goldstein, 325-326 Bond Building, Washington 5, D. C., Attorney for Plaintiff.

To: William H. Griffin, pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

Please take notice that the Motion for Summary Judgment, with Points and authorities annexed thereto, are annexed hereto. The rules of the Court require that if you oppose the granting of said Motion you shall, within ten (10) days from the date of service of a copy of this Motion upon you, or such further time as the Court may grant, or as the parties hereto may agree upon, file in reply with the Clerk of said Court, a statement of the Points and Authorities upon which you rely, and serve a copy thereof upon the undersigned.

A. M. Goldstein, 325-326 Bond Building, Attorney for Plaintiff.

Certificate of Mailing

I hereby certify that on the 15th day of February, 1944, I mailed a copy of the foregoing Motion for Summary Judgment, with Points and authorities annexed thereto, and exhibits to the defendant, William H. Griffin, pro se, addressed to him at 4801 Connecticut Avenue, N. W., Washington 8, D. C., in an envelope bearing my return address in the upper left hand corner, and with proper postage affixed thereto.

A. M Goldstein.

[fol. 74] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

AFFIDAVIT OF LOUIS STARK, ESQUIRE—Filed February 15, 1944

CITY AND STATE OF NEW YORK,
County of New York, ss:

Louis Stark, being first duly sworn according to law, deposes and says: that he is a practicing attorney in good standing in the State of New York, having been duly admitted to practice law in the State of New York at a Term

of the Appellate Division, Second Department, in December, 1930.

That since deponent's admission to the practice of law in December, 1930, he has been continuously actively engaged in such practice in New York State, and he has maintained, and still maintains, his office at No. 320 Broadway, New York City, since such admission.

That deponent is familiar with and knows the law with respect to the entry of judgment for unpaid alimony due under a judgment of divorce granted in the State of New York prior to September 1, 1939, and subsequent thereto.

That prior to September 1, 1939, the effective date of Section 1171-b of the Civil Practice Act, the law governing the entry of judgment for unpaid alimony under a judgment of divorce was controlled by Section 538 of the Civil Practice Act, a certified copy of which, under the seal of Ruth M. Miner, Deputy Secretary of State, is annexed hereto marked Exhibit "A" and made a part hereof.

I have carefully examined the docket entries with respect to the instant case in the Clerk's Office at the County Court [fol. 75] House in the Supreme Court of the State of New York, in the County of New York, Borough of Manhattan, City of New York, on the 22nd day of April, 1943, and find, among other entries, that judgment of divorce was entered in favor of the plaintiff, Grace H. Griffin, and against the defendant, William H. Griffin, on June 24, 1924, and modified by decree entered on December 9, 1926, which directed defendant to pay plaintiff alimony at the rate of $3000.00 per year, payable $250.00 per month. On February 18, 1938, an order was granted by Hon. Aaron J. Levy, a Justice of the Supreme Court, directing the entry of judgment against Defendant, William H. Griffin, in favor of the plaintiff, Grace H. Griffin, in the sum of $25,382.75, consisting of accrued alimony and interest thereon, due up to and including the date of such order. In accordance with said order, judgment was entered by the Clerk of the Supreme Court on February 23, 1938, in the sum of $25,382.75, in favor of the plaintiff and against the defendant.

The law in the State of New York *prior to September 1, 1939,* permitted a plaintiff to obtain an order from the Supreme Court in which the divorce judgment was rendered, directing the entry of judgment for unpaid alimony *without notice to the defendant.* The authority for this statement of the law is Thayer vs. Thayer, 145 Appellate

Division, 268, 129 New York Supplement 1035, first Department, (1911) (italics supplied).

The Appellate Division of the State of New York held that the Court has jurisdiction over the clerk's docket, citing Code of Civil Procedure, Sec. 1269. Section 1269 of the Code of Civil Procedure is now Section 538 of the Civil Practice Act, referred to previously in this affidavit.

The Appellate Division has therefore held that no notice to the defendant is necessary in order to obtain an order directing the entry of judgment for unpaid alimony. This Thayer case has never been overruled, directly or indirectly by any court, and has been consistently followed in the courts of the State of New York.

[fol. 76] On September 1, 1939, Section 1171-b of the Civil Practice Act became effective, a certified copy of which section, as amended by the Laws of 1940, under the signature of Ruth M. Miner, Deputy Secretary of State, is annexed hereto and made a part hereof and marked Exhibit "B".

According to this latter section, namely Section 1171-b, it became effective on September 1, 1939. This section originally applied only to divorce and separation actions and in 1940 it was amended to include annulment actions. Notice is now necessary to be given to a defendant in applying for an order to enter judgment for unpaid alimony. In discussing the purpose and effect of this section, deponent refers to the case of Durlacher vs. Durlacher, 173 Misc. 329, 17 N. Y. S. (2d) 643 (1940).

In the case at bar, the order directing the entry of judgment was granted on February 18, 1938, prior to the enactment and effective date of Section 1171-b, so that the rule enunciated in the Thayer case was controlling, and defendant was not entitled to notice of the application for the entry of judgment for the unpaid alimony, since, as held by the Courts of this State, it was not the rendition of a new judgment, but only a means of effective enforcement of an old judgment.

Louis Stark.

Subscribed and sworn to before me this 18 day of November, 1943. Samuel H. Fromberg, Notary Public, Kings County. (Seal.)

[fol. 77] EXHIBIT "A" TO AFFIDAVIT

Chap. 925

An Act in Relation to Civil Practice in the Courts of the State of New York

Became a law May 21, 1920, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Civil Practice Act

* * * * * * *

Judgment

Article 35. Judgment [§§ 472-548].

* * * * * * *

Article 35

Judgment

Judgment Generally

* * * * * * *

Satisfaction, Assignment and Cancellation

* * * * * * *

Section 538. Power of courts respecting docket.

* * * * * * *

Satisfaction, Assignment and Cancellation

* * * * * * *

§ 538. Power of courts respecting docket. A court of record has the same power and jurisdiction concerning the docket of its judgment, rendered wholly or partly for a sum of money or directing the payment of a sum of money, kept by a county clerk, which it has concerning the docket kept by its own clerk. It may direct that such a docket be amended; or that its judgment, there docketed, be docketed nunc pro tunc.

State of New York,
Department of State, ss:

I have compared the preceding copy of Section 538 of Chap. 925 laws of 1920 with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said section.

Given under my hand and the official seal of the Department of State, at the City of Albany, this 10th day of Nov. in the year one thousand nine hundred and forty-three.

Ruth M. Miner, Deputy Secretary of State. (Seal.)

[fol. 78] Exhibit "B" to Affidavit

Chapter 226

An Act to amend the civil practice act, in relation to award of alimony in annulment actions.

Became a law March 21, 1940, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

* * * * * * *

§ 6. Section eleven hundred seventy-one-b of the civil practice act is hereby amended to read as follows:

§ 1171-b. Enforcement by execution of judgment or order in action for divorce, separation or annulment. Where the husband, in an action for divorce, separation, annulment, or declaration of nullity of a void marriage, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the court may make an order directing the entry of judgment for the amount of such arrears, together with ten dollars costs and disbursements. The application for such order shall be upon such notice to the husband as the court may direct. Such judgment may be enforced by execution or in any other manner provided by law for the collection of money judgments. The relief herein provided for is in addition to any and every other remedy to which the wife may be entitled under the law.

STATE OF NEW YORK,
Department of State, ss:

I have compared the preceding copy of Section 1171-b of the Civil Practice Act as amended by Chap. 226 laws of 1940 with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom and of the whole of said section.

Given under my hand and the official seal of the Department of State, at the City of Albany, this 10th day of Nov. in the year one thousand nine hundred and forty-three.

Ruth M. Miner, Deputy Secretary of State. (Seal.)

[fol. 79] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

AGREED FACTS AND OFFERS OF PROOF PRESENTED BY DEFENDANT—Filed February 23, 1944

1. As of June 24, 1924, in the New York Supreme Court, Borough of Manhattan, New York City, the parties to this action were divorced by decree of said Court which, as modified by decree of said Court dated November 21, 1924, provided:

> "* * * that the issue of said marriage is one daughter, Grace H. Griffin, born March 15, 1909, and one son, William Stuart Griffin, born August 30, 1917; * * *
>
> Ordered, Adjudged and Decreed, that the defendant, William H. Griffin, shall pay to the plaintiff, Grace H. Griffin, for the support and maintenance of the said plaintiff and said children the sum of Four Thousand Five Hundred Dollars ($4,500) per annum, payable monthly in advance at the office of Warren Leslie, 2 Rector Street, attorney for the plaintiff; * * *
>
> Ordered, Adjudged and Decreed, that the obligation of the defendant, William H. Griffin, to pay the alimony provided by the decree of this Court, dated June 24, 1924, as also herein provided, and of the plaintiff

to permit defendant to see the children are reciprocal, * * *

Ordered, Adjudged and Decreed, that the foregoing provisions of this modified interlocutory judgment respecting custody and amount of alimony may, at any time upon application to this Court by either party in the manner provided by law, be annulled, varied and modified by this Court."

2. On appeal by this defendant from such alimony and custody provisions, the Appellate Division of the Supreme Court, Borough of Manhattan, New York City, rendered its decision (reported in 218 App. Div. 762), on which judgment was entered December 9, 1926, providing:

"Ordered, Adjudged and Decreed, that the said judgment so appealed from be, and the same hereby is, modified by reducing the amount which the defendant is directed to pay to the plaintiff for the support and maintenance of said plaintiff and the children to the sum of Three Thousand Dollars ($3,000) per annum, payable monthly in advance at the office of plaintiff's [fol. 80] counsel, * * *; and further modified so as to provide that the defendant may have the custody of his son as now provided for in the modified interlocutory judgment from three o'clock in the afternoon on each Friday until eleven o'clock each Monday morning during the period of his son's Christmas vacation and of the son's summer vacation; * * *

3. The personnel of the Appellate Division rendering said decision on which such judgment was entered were John Proctor Clarke, Victor J. Dowling, Edward R. Finch, John V. McAvoy, and Francis Martin.

4. No change has ever since said Appellate Division decision and judgment thereon of December 9, 1926, been made in said custody provisions and in the provision above quoted that "the obligation of the defendant * * * to pay the alimony * * * and of the plaintiff to permit defendant to see the children are reciprocal".

5. The decree of the New York Supreme Court in 1924 terminated a marital relationship between the parties to this suit which had existed since 1906, and during which existence plaintiff had (a) refused to permit the customary sexual

intimacies of such relationship, or any sexual intimacy between plaintiff and defendant, at all times except on one occasion around two years after their marriage, on a second single occasion around six years after their marriage, and on a third single and last occasion around ten years after their marriage, and (b) had monopolized and alienated the affections of the two children of the parties, and robbed defendant of such affections.

6. At various times prior to January 1929, and when defendant had discharged in full his obligation to pay all alimony awarded, and continuously since January 1929 when defendant's alimony obligations were paid in full, plaintiff refused to permit defendant to see the daughter of the parties as provided in said divorce decree.

7. At various times prior to January 1930, and when [fol. 81] defendant had discharged in full his obligation to pay all alimony awarded, and continuously since January 1930 at times when defendant's alimony obligations were paid in full, plaintiff refused to permit defendant to see the son of the parties as provided in said divorce decree, and also refused to permit said son to communicate with defendant in any way.

8. Neither said daughter nor said son has communicated with defendant in any way since 1930.

9. Defendant, who had practiced law in New York City as a member of the New York Bar since 1906, voluntarily ceased such practice in 1928, and never thereafter resumed such practice in that State.

10. On January 3, 1929, with the full advance knowledge of plaintiff, defendant took steamer in New York City for Europe, having at that time paid plaintiff on December 24, 1928, as provided in the divorce decree, the monthly instalment of alimony due in advance that day in addition to all prior accruals, and which was payment in full and in advance to January 24, 1929, of all alimony obligation of defendant to plaintiff as specifically determined and fixed by said divorce decree above mentioned; so that defendant was on said January 3, 1929, fully paid and discharged of all obligation "for the support and maintenance of the said plaintiff and said children" (quoting from the said divorce decree), including particularly said son then 12 years old.

11. Prior to said January 3, 1929, defendant had also paid plaintiff as alimony for the support and maintenance of herself and said children, over and above all payments at the rate of $3,000 per annum, further sums totaling $3,625, in discharge of earlier awards of alimony at higher rates which the Appellate Division by its decision in 1926 held to be excessive and unlawful.

12. On said January 3, 1929, in addition to all of the fore-[fol. 82] going sums,—i. e., payments at the rate of $250 per month for each and every month since the commencement of the divorce suit in 1923 plus $3,625.—defendant had deposited in banks and in a public office in New York City cash resources belonging to him, which were at all times after said January 3, 1929, at plaintiff's disposal for the support of herself and said son under 16 years of age and from which plaintiff subsequently collected a net total of $5,432., which she received and applied as she elected.

13. On or about December 29, 1929, plaintiff personally attended as a witness before the grand jury for New York County and gave testimony before it under oath to tell the truth, the whole truth and nothing but the truth, upon which, and which alone (as she was the sole witness), said grand jury then and there or not later than December 31, 1929, returned against defendant an indictment for a felony accusing defendant "of the Crime of Abandoning a Child in Destitute Circumstances" in that defendant

> "being then and there the parent and person charged with the care and custody for nurture and education of one William Stuart Griffin who was then and there a child under the age of sixteen years, to wit, of the age of twelve years, did feloniously abandon the said child in destitute circumstances, and feloniously and wilfully omit to furnish necessary and proper food, clothing and shelter for the said child, and, well knowing the needs of the said child, wilfully and feloniously did fail, omit, and neglect to provide for the said child any food, clothing or shelter whatsoever, against the form of the statute" etc.,

and which indictment bears the endorsement, "Filed 31 day of Dec. 1929 * * * Witnesses: Grace H. Griffin."

14. Plaintiff's attorney at that time was one Warren Leslie, a person of Irish extraction, of Roman Catholic faith,

and affiliated with the political group in New York County commonly known as Tammany Hall; and the Acting District Attorney of New York County at that time, who procured said felony indictment against defendant, was one Harold W. Hastings, also a person of Irish extraction, of [fol. 83] Roman Catholic faith, and affiliated with said Tammany Hall; and said Leslie and said Hastings were at that time close personal friends.

15. During that general period of time, and for some months or years thereafter, said Leslie was actively engaged in negotiating a sale to The City of New York of some real estate located at Bergen Beach, Long Island, which said Leslie owned or controlled, and which he had secured at a cost of about $325,000., and succeeded in concluding such sale at the price of $2,509,909., shortly after his acquisition of said real estate. And said sale was thereafter confirmed by a New York Supreme Court Justice, of Irish extraction and Roman Catholic faith and same political Party affiliation as said Leslie. Thereafter, the Corporation Counsel of The City of New York sued said Leslie to annul said sale, charging that it was procured by fraud in the suppression of material facts and title documents and by bribery of high officials of the City whose approval was essential to the concluding of such sale, among other acts of corrupt conduct in that connection. In April 1935, on or about April 12, judgment was rendered in said suit, by Supreme Court Justice Albert Conway (now a member of the Court of Appeals of the State of New York) adjudging said sale to be null and void for the fraud of said Leslie.

16. Said Hastings stated and admitted to defendant's attorney in the indictment proceedings, following defendant's voluntary return to the New York jurisdiction and submission to arrest under said felony indictment prior to trial thereon, that he had procured said indictment as a personal favor to said Warren Leslie at said Leslie's request.

17. Following defendant's arrest under said indictment in November 1932, in North Carolina, proceedings to procure defendant's extradition to New York were conducted, [fol. 84] not by said Hastings or any public official of the County or State of New York, but by said Leslie through a partner or associate named Edgar Martin. In aid of such proceedings, plaintiff on November 2, 1932, signed an "Affi-

davit as to Flight" containing statements, which she swore before a New York County Notary Public were true, that

> "I am the principal complaining witness against the above-named fugitive who is charged with the crime of —Abandoning a Child in Destitute Circumstances—in having, on or about the 3rd day of January, 1929, * * * feloniously abandoned his minor child William Stuart, as more particularly appears from the indictment herein, a copy of which is hereto annexed and made a part hereof. * * *
>
> "This application is made in good faith, for the sole purpose of punishing the accused, and it is not intended or desired to use the prosecution or to obtain the requisition for the purpose of collecting a debt * * *, or for any private purpose whatever,"

and the affidavit then stated even more specifically:

> "On June 24th, 1924 my marriage to the fugitive was dissolved by a judgment of the Supreme Court of New York County * * * modified by the Appellate Division of the Supreme Court so that the provision for support was reduced to $3000. per annum payable monthly in advance on the twenty-fourth day of each month. The fugitive paid under this order of the Court * * * up to and including the instalment due January 24th, 1929. * * * Since that time * * * I have collected by reason of actions taken by my attorneys the sum of $1562.97 through executions and third party orders, and I have also collected the sum of $3869.25 through a proceeding in the Supreme Court, Kings County where the fugitive had an interest in real estate. * * *
>
> "On the 3rd of January 1929 the fugitive came to the Allen-Stevenson School on East 78th Street, New York County, where our child William Stuart attended school. He attempted to take the child away therefrom and I was present and prevented him. As a matter of fact, he apparently intended to take the child to Europe with him, for on the same day the fugitive sailed for Europe on the steamship De Grasse."

Defendant, intending neither to kidnap nor to abandon him, sent a note to his son asking him to secure his mother's per-

mission for him to come to the steamship pier to say goodbye to his father, and sought to facilitate the arrangement. Such permission was refused, and defendant did not see his son at the steamship pier.

18. Following defendant's submission to custody in North Carolina in the extradition proceedings, successfully conducted by said Leslie's associate Martin on said affidavit of plaintiff, defendant sued out a writ of habeas corpus. [fol. 85] On the eve of its return date, said Leslie's associate Martin offered a specific sum of money to the Sheriff holding defendant in custody to permit Martin and a private detective then accompanying him to kidnap defendant and spirit him in the dead of night out of the North Carolina jurisdiction, which bribe said Sheriff refused. At the conclusion of the argument the following day on the return of the writ, after defendant had called the attention of the Court to plaintiff's affidavit as to flight and certain New York decisions, the North Carolina Court rendered judgment, stating inter alia:

> "And the Court being of the opinion, from the consideration of all the evidence introduced, that the said William H. Griffin did not commit the crime of abandonment as charged in the bill of indictment (see section 480 New York Penal Code and People v. Lewis, 116 N. Y. Supplement 893 and People v. Lahm, 250 N. Y. Supplement, p. 856), and it appearing to the Court that the petitioner is entitled to the relief sought in his petition and the writ of habeas corpus, it is
>
> "Ordered, Considered and Adjudged by the Court that the petition and the writ of habeas corpus be, and they are hereby sustained and allowed, and that the petitioner, William H. Griffin, be released and discharged from custody."

The New York cases above cited by the North Carolina Court are a matter of official public record in the State of New York, and were at all times since their rendition accessible to, and presumed to be known by, said Harold W. Hastings and said Warren Leslie as members of the New York Bar.

19. Shortly following the adjudication of the North Carolina Court above mentioned, defendant moved in the Court

of General Sessions of the County of New York, which had jurisdiction of said indictment, to quash said indictment, citing the disposition in North Carolina. Such motion came on for hearing before one Donnellan, a person of Irish extraction, of Roman Catholic faith, and then or immediately prior to his election as Judge a leader in Tammany Hall of one of its political districts. Said Judge denied such motion to quash on the ground that defendant was not in the New York jurisdiction.

[fol. 86] 20. On advice of counsel that submission to the jurisdiction was the only means of eliminating the indictment and securing alimony relief, defendant voluntarily submitted to the New York jurisdiction, was placed under arrest, and again moved to quash the indictment, calling particular attention to the specific admissions of plaintiff in the affidavit as to flight above quoted. Said second motion came on for hearing before one Freschi, a person of Italian extraction, of Roman Catholic faith, and affiliated with Tammany Hall. Said Judge denied such motion to quash on the ground that the grand jury proceedings were regular on their face and he would not consider any evidence not in the grand jury minutes.

21. On defendant's trial under such indictment in April 1935, plaintiff was the sole witness for the prosecution. On being confronted on cross examination with her affidavit as to flight, she admitted having received the various sums of defendant therein stated. On the completion of her testimony, the presiding Judge directed the jury to return from their seats in the jury box a verdict of Not Guilty. Defendant was not called upon to take the witness stand to testify.

22. Defendant, in complete ignorance of the felony indictment then held for his arrest on apprehension, in March 1930, through his attorney in New York City (defendant being then in Europe), moved the New York Supreme Court, in the manner provided by law and also specifically authorized by the divorce decree of 1924, for the annulment or modification of the alimony provision in the divorce decree above quoted, on the grounds, among others, that one of the minor children for whom such alimony provision was made in the divorce decree of 1924, had attained her majority on March 15, 1930, and no longer had legal claim on de-

fendant for support, and that defendant had upon the facts then presented sustained a severe reduction of income mak- [fol. 87] ing the original award excessive, onerous and inequitable. In the course of proceedings on that application an appeal by defendant came on for hearing in June 1930 before the Appellate Division of the Supreme Court in New York before five Justices of that Court, four of whom—Victor J. Dowling, Edward R. Finch, John V. McAvoy, and Francis Martin—had also rendered the decision in 1926 favorable to defendant mentioned in paragraphs 2 and 3 above. The fifth member at that time was James O'Malley. The divorce case between the parties to this suit had not in the interval between 1926 and June 1930 been before that appellate court. On the oral argument of such appeal, while defendant's counsel was addressing the Court as the luncheon adjournment hour approached, said Dowling, then Presiding Justice of that Court, interrupted defendant's counsel with the remark from the Bench,

> "Mr. C——, we know your client, and we know this case. We do not believe your client is responsible for his statements. However, if you want to argue further we will hear you at 2 o'clock."

The decision rendered by that Court following that remark, favored defendant (the person thus described by said Dowling) with the relief that he sought on that appeal (see report of that decision in 229 App. Div. 841).

23. Such remark of said Dowling was not supported or warranted by any fact in the appeal record then before that Court, but was induced by false and slanderous statements against defendant conveyed to said Dowling privately by his personal and political friend and fellow Irish Catholic, said Warren Leslie, then appearing as attorney for plaintiff before that appellate court, and also by said Dowling's confidential knowledge of the felony indictment against defendant then held in official secrecy awaiting an opportunity to apprehend defendant. The questions involved on that appeal were solely questions of law which in no way hinged [fol. 88] upon defendant's responsibility of statement; and the remark of said Dowling was not germane to any issue before that appellate court and within its cognizance on that appeal.

24. Said Dowling was of Irish extraction, of Roman Catholic faith, and affiliated with said Tammany Hall; as were also said John V. McAvoy, said Francis Martin, and said James O'Malley, four of the five Justices hearing said appeal and present when the remark above quoted was made by said Dowling from the Bench.

25. Following such decision of said Appellate Division favorable to defendant, hearing on defendant's said application for annulment or modification of said alimony provisions came on for its first hearing on the merits in July 1930 before Justice John L. Walsh, who was of Irish extraction, of Roman Catholic faith, affiliated with Tammany Hall, and a personal and political friend of plaintiff's said attorney, Warren Leslie. In the course of the oral argument on said application, said Walsh announced orally that in his opinion defendant was entitled as matter of law to a reduction of the alimony allowance because of the maturity of the daughter, and he thereupon began dictating a decision providing for a reduction in said allowance. Whereupon plaintiff's attorney interrupted the dictation with an argument, among other grossly slanderous and scurrilous statements, that defendant was a moral pervert, a very low moral person, and that he had gone to Europe leaving his son in destitute circumstances. Defendant's counsel, in defendant's absence in Europe, urged that the statements made by plaintiff's attorney were not supported by any papers before the Court and should be embodied in affidavits and defendant given an opportunity to reply. Plaintiff's attorney thereupon stated that Justice Dowling had expressed his opinion of defendant, repeating the remarks above quoted made the previous month from the Appellate Division Bench. Said Walsh thereupon announced that he would consult Judge [fol. 89] Dowling about the matter. The fact was then mentioned that said Dowling had quite recently sailed for Europe to be absent for the summer. Said Walsh rejoined that he was sailing for Europe shortly himself and would see Judge Dowling abroad. He thereupon discontinued his dictation and adjourned the entire proceeding until the reconvening of court in the Fall.

26. The action of said Walsh in receiving and considering statements of counsel not supported by the papers before the court and without opportunity to defendant to reply, and in receiving and considering the remarks of said Dowl-

ing from the Appellate Division Bench, and in suggesting that he would consult said Dowling about the matter—said Dowling then having absolutely no status in the proceeding, and in adjourning defendant's said application until Fall for the purpose of such consultation with said Dowling, was highly improper and unjudicial.

27. In October 1930, said Walsh called before him in his chambers the counsel for both plaintiff and defendant. In the course of further oral argument, plaintiff's counsel repeated the slanderous and scurrilous statements against defendant's moral character, and that defendant had gone to Europe and left his son in destitute circumstances, several times referred to defendant as a son of a bitch, and concluded:

> "Your Honor, the greatest desire of your life is to have a child, but Providence has denied you that blessing. This man has a son and he abandons him and leaves him destitute. If you had been blessed with a son, would you have acted in that manner toward him?"

The hearing concluded without announcement. A few days later, the official New York Law Journal published the notation, "Griffin v. Griffin—Denied." without other word or explanation.

28. The insult above mentioned, directed more particularly at defendant's hallowed mother, dead many years before plaintiff married defendant and in no way involved in the application before Walsh, was exuded by a scurrilous [fol. 90] skunk in plaintiff's interest and behalf (and by a yellow cur, since it was made in defendant's absence). Such remark being made and repeated without resentment or rebuke by said Walsh showed a close relationship between him and said shyster and the corrupt influence that the latter had upon said Walsh. Said remark, in its context and also independently of it, deprived defendant of his right to have his application heard and determined by a judge who is reasonably free from bias which is a part of the fundamental right to a fair trial guaranteed to every litigant (*Whitaker* v. *McLean*, 73 App. D. C. 259), and was a fraud in fact and in law upon defendant.

29. Prior to such denial in October 1930 of all relief to defendant on his said application for modification of ali-

mony, information of the existence of the felony indictment, which was then pending secretly awaiting defendant's apprehension, had been conveyed privately to said Walsh in the absence and without the knowledge of defendant or his attorney, both of whom were then wholly without knowledge of any such indictment and without opportunity to refute or disprove its validity, or its value to said Walsh as confirmation of the statements of plaintiff's counsel on the oral arguments above stated. The papers then before said Walsh, and which delimited his jurisdiction of factual consideration, contained no intimation or information of the existence of such indictment.

30. Following the disposition of the habeas corpus proceeding in North Carolina mentioned in a preceding paragraph hereof, defendant retained as his attorney a former New York Supreme Court Justice, of Irish extraction, Roman Catholic faith, and Tammany Hall affiliation, who had voluntarily resigned his judicial position to return to private practice. And said attorney promptly applied in defendant's behalf, in or about March 1933, for an annulment or modification of alimony as matter of law because [fol. 91] of the maturity of the daughter and as matter of equity because of the various occurrences hereinabove stated and the substantial exhaustion of defendant's entire resources and income caused by the corrupt conduct of plaintiff and her attorney, above stated, and also the interference of plaintiff with defendant's clients and sources of income. That application was heard by Justice Ingraham, who was affiliated with Tammany Hall and who had secured his judicial position by the support of said Tammany Hall. On denying said application, said Justice Ingraham stated to defendant's said attorney, one of his recent judicial associates, that he had denied said application because of the pendency of the felony indictment against defendant and that such indictment would have to be disposed of before any alimony relief could be granted defendant.

31. Following the two futile motions by said attorney to quash said indictment and defendant's trial and acquittal, hereinabove stated, said attorney solicited and received from the Appellate Division above mentioned an appointment as Official Referee at a salary two-thirds of his former salary as a Supreme Court Justice, withdrew as defend-

ant's attorney, and turned defendant's interests over to his son, whose brother married a daughter of said Warren Leslie, plaintiff's attorney above mentioned. Said son, one Conn Cohalan, thereupon in 1935 moved for an annulment or modification of the said alimony allowance in the decree of June 1924. In violation of defendant's instructions to oppose any reference of such application to an Irish Catholic or a Jewish official, said Cohalan consented to its reference to one Jacob Marks, a former judge in a minor New York court who had been appointed an Official Referee by said Appellate Division. The order of reference, made by Supreme Court Justice Salvatore A. Cotillo, before whom said application first came for hearing and decision, provided:

[fol. 92] "Ordered that the following questions of fact:

(a) the amount of money due from defendant to plaintiff; and

(b) defendant's present ability to pay;

be and hereby are referred to Hon. Jacob Marks, Official Referee, who is hereby appointed referee to determine the same; and that such referee report his findings thereon to the court for the further action of said court. Enter S. A. C., J. S. C."

Said order, made September 18, 1935, was actually prepared in the office of the attorney then representing plaintiff and presented by him to said Cotillo for signature, and was submitted with said Cohalan's consent, contrary to defendant's specific instructions above stated, although said order contains recitals that plaintiff opposed said motion, that defendant favored same, and that it was made "on motion of * * * Cohalan, attorney for the defendant, * * *" With defendant's knowledge and consent, said Cohalan had entered into negotiations with plaintiff's said attorney to determine the possibility of settling the litigation between the parties; but without defendant's knowledge at the time, or consent at any time, said attorney had entertained said Cohalan at his club to the point of having said Cohalan under his influence and domination and plaintiff personally had communicated several times with said Cohalan.

(Defendant reserves the right to present other proofs, or offers of proof, in this connection, if issues are tendered by plaintiff which make such proof appropriate and pertinent.)

32. Defendant gave testimony before said Marks respecting his income. After the hearing had closed, plaintiff's attorney communicated privately with said Marks and furnished further evidence without defendant's knowledge or opportunity to explain or refute, said Cohalan neglected and refused to advise defendant what had transpired in that connection, and the referee made his report to the Court on or about January 7, 1936. Defendant first learned of such report on January 21, 1936, and from it first learned of the private communications to said referee from plaintiff's attorney above mentioned.

(Defendant reserves the right to present other proofs, [fol. 93] or offers of proof, in respect of said hearing, and said referee, and the conduct of said attorneys, if issues are tendered by plaintiff which make such proof appropriate and pertinent.)

33. The report of said referee Jacob Marks to said Supreme Court Justice Cotillo, dated January 7, 1936, contained the following without condition of any kind attached to it:

"In view, however, of the fact that one of the children, the daughter, arrived at age on March 15, 1930, I recommend a reduction of $1000 yearly in the future alimony, payable to the plaintiff for the support of herself and son eighteen years of age,"

and then continued:

"and if any relief can be granted in view of the outstanding decision of Mr. Justice Ingraham, I would recommend a reduction of $1000 yearly as a condition of purging himself from contempt, this reduction to date from March, 1930, so that the defendant will receive the benefit of $6000 reduction of arrears, leaving the sum of arrears payable ($6000 deducted from $14,818) $8818, with interest, which should be paid in monthly instalments of $200, in addition to $166.66 monthly, if my suggestion should be adopted by the court that the alimony be reduced to $2000 a year."

Justice Cotillo allowed such reductions "in accordance with the recommendations of the Referee" and directed that the order to be submitted for his signature to that effect be settled on notice.

34. Said Cohalan, ignoring defendant's instructions to be kept promptly and fully posted of all developments, instead withheld from defendant the contents of the proposed order to be submitted for signature and all knowledge of other developments vital to his interests, and, without defendant's knowledge or consent, agreed to an order prepared by plaintiff's attorney, which was thereupon signed by Justice Cotillo. Said order did not provide for "a reduction of $1000 yearly in the future alimony without condition because the daughter had arrived at age, or for the payment of arrears of $8818 with interest in monthly instalments of $200., but instead, disregarding the decision of said Justice that it should be "in accordance with the recommendations of the Referee," provided that "the sum of $18,493.64 was due and payable on October 25, 1935;" varying materially the reduction of an additional $1000 yearly [fol. 94] to date from March 1930 to give the defendant the benefit of $6000 reduction of arrears, in accordance with the recommendations of the Referee.

(Defendant reserves the right to present other proofs, or offers of proof, in this connection, if issues are tendered by plaintiff which make such proof appropriate and pertinent.)

35. Said order, made February 24, 1936, and entered on or about that date, and containing such erroneous and unauthorized provisions, and disregarding the decision of Justice Cotillo as above found, is the order that is referred to in the order of Aaron J. Levy Justice made February 18, 1938, and attached to the complaint herein as Exhibit A, and that order together with the accompanying judgment entered thereon is the basis, and the sole basis, of plaintiff's cause of action alleged in her complaint herein.

36. On and after March 15, 1930, defendant was relieved of all obligation under the divorce decree of 1924 and under New York law to support or to contribute to the support and maintenance of one of the three beneficiaries named in the divorce decree of 1924.

37. On and after March 15, 1930, defendant was entitled as a matter of law and absolute right to a reduction in the amount of alimony provided by the divorce decree of 1924 because of the coming of age on March 15, 1930, of one of the three beneficiaries named in the divorce decree of 1924.

38. During the period December 1929 to and including February 1938, 57 persons served as Justices of the New York Supreme Court in the First Judicial Department. At least 50 of that total number were nominated by and owed their election as such Justices to the support of Tammany Hall; at least 25 of such Justices were Irish Catholics, at least 14 were Jews, 4 were of Italian birth or ancestry, and [fol. 95] 3 were of German birth or ancestry.

39. During the month of February 1938, the New York Supreme Court in the First Judicial Department was composed of 35 Justices, of whom at least 33 had been nominated by and had owed their election as such Justices to the support of Tammany Hall, at least 13 of them were Irish Catholics, at least 10 were Jews, 4 were of Italian birth or ancestry, and 2 were of German birth or ancestry.

40. It was common practice in the First Judicial Department in New York from December 1929 through February 1938 for the said Justices so sponsored by Tammany Hall to fraternize with, discuss details of pending litigation privately with, and show special favors to, Irish and Jewish attorneys affiliated with Tammany Hall who appeared in litigation before said Justices.

41. Justices Victor J. Dowling and John L. Walsh were Irish Catholics who had been nominated by and owed their election as Justices to the support of Tammany Hall, and had fraternized with, discussed details of the divorce case between the parties to this suit while said case was pending before them as Justices privately with, and showed special favors to, one Warren Leslie, Irish Catholic attorney for this plaintiff in said divorce case and affiliated with said Tammany Hall, to defendant's loss and injury.

42. Communication by plaintiff with defendant's clients, and particularly one T. H. McCarthy in Paris, France, and other interferences by plaintiff with defendant's sources of professional income, all without ... endant's knowle ... at the time of such communications and interferences, caused defendant losses of professional income exceeding $30,000.

43. No notice of any kind was given defendant of plain-
[fol. 96] iff's application for the judgment in suit here or for the order upon which said judgment was entered. No opportunity was afforded defendant to be heard to defend and enforce his rights in the premises, and defendant did not appear before the Court upon said application. No copy of said judgment or of said order was served upon defendant at any time prior to the service of the complaint herein.

44. No law of New York enacted by its Legislature which by express terms dispensed with the giving of notice to defendants of applications for orders or judgments for money or property against said defendants or with opportunity to be heard on such applications to defend and enforce their rights in the premises or with service of copies of orders or judgments secured on such applications was in force and effect at the time of the application for and of the entry of the judgment in suit here and of the order upon which said judgment was entered.

45. It is the law of New York that the judgment in suit here is open to attack and nullification for fraud in its incidents and in its procurement as a matter of defendant's absolute and unqualified right at any time prior to February 23, 1948, and said judgment therefore lacks the finality essential to bring it within the Full Faith and Credit Clause of the Federal Constitution.

46. It is the law of New York that the order of Justice Cotillo above mentioned is open to attack and nullification for fraud in its incidents and in its procurement as a matter of defendant's absolute and unqualified right at any time prior to February 24, 1946. Defendant filed and served within the time prescribed by the laws of New York a notice of appeal from said order, and it is therefore discretionary with the New York court to allow defendant [fols. 97-98] even now to prosecute said appeal with the possibility of securing a reversal of said order and removal of it as a basis for the judgment in suit here. Said judgment therefore lacks the finality essential to bring it within the Full Faith and Credit Clause of the Federal Constitution.

William H. Griffin, Defendant pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

To A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building, Washington 5, D. C.

Please take notice that the foregoing Agreed Facts and Offers of Proof will be filed on February 23, 1944, in the office of the Clerk of the United States District Court for submission to the Pre-trial Justice on the pre-trial proceeding herein noticed for February 23, 1944, for his acceptance or rejection in whole or in part and for an order embodying such disposition.

William H. Griffin, Defendant pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

I hereby certify that I mailed a copy of the foregoing Agreed Facts and Offers of Proof, and Notice, to A. M. Goldstein, attorney for plaintiff, at 325-326 Bond Building, Washington 5, D. C., this 23rd day of February, 1944, in an envelope with proper postage affixed thereto, and bearing my return address in the upper left hand corner.

William H. Griffin, Defendant pro se.

[fol. 99] At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, at the Court House, on the 18th day of September, 1935.

Present: Hon. Salvatore A. Cotillo, Justice.

GRACE H. GRIFFIN, Plaintiff,

against

WILLIAM H. GRIFFIN, Defendant

A motion having been made by the plaintiff above named by order to show cause, dated the 5th day of April, 1935, for an order adjudging the defendant in contempt of this court for his disobedience of the order, judgment and decree of the Honorable William Harmon Black, dated June 24, 1923, and the judgment entered herein in the office of the clerk of the County of New York on November 19, 1926, and punishing him for contempt in disobeying said order, decree and judgments by failing and refusing to pay to the plaintiff herein the sum of three thousand dollars ($3,000.00) per annum, and other payments, as provided in said order, decree and judgments; and directing the defendant to give a bond guaranteeing and providing for

the plaintiff and her children; and for such other and further relief as to the Court may seem just and proper; and said motion having come on to be heard before this Court on the 8th day of April, 1935;

Now on reading the order to show cause dated the 5th day of April, 1935, the affidavit of Grace H. Griffin sworn to the 5th day of April, 1935; the order, judgment and decree of Hon. William Harmon Black, dated June 24, 1924; the judgment entered herein in the office of the clerk of the County of New York on November 19, 1926; and upon [fol. 100] reading and filing the affidavits of Grace H. Griffin, sworn to the 10th and 13th days of April, 1935, and exhibits annexed thereto, and the affidavit of Grace H. Griffin, II, sworn to the 9th day of April, 1935, and due proof of service of all of the foregoing, all in support of said motion, and after reading the affidavit of William H. Griffin sworn to the 2nd day of April, 1935, and after reading and filing the affidavits of William H. Griffin sworn to the 10th and 15th days of April, 1935, and exhibits annexed thereto, all in opposition to said motion; and after hearing George Seagrave Franklin, Esq., attorney for the plaintiff, in favor of said motion, and Daniel F. Cohalan, Esq., attorney for defendant in opposition thereto, and due deliberation having been had, and upon filing the opinion of the Court,

Now, upon motion of Conn Cohalan, substituted attorney for the defendant herein, it is hereby

Ordered, that decision on said motion to adjudge defendant in contempt of this Court and to punish him for said contempt be and the same hereby is held in abeyance pending the return of the referee's report in the defendant's companion motion brought under section 1170 and 1172(a) of the Civil Practice Act.

Enter. S. A. C., J. S. C.

[fol. 101] At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, at the Court House, on the 18th day of September, 1935.

Present: Hon. Salvatore A. Cotillo, Justice.

Index #28705—1923

GRACE H. GRIFFIN, Plaintiff,

against

WILLIAM H. GRIFFIN, Defendant

A motion having been made by the defendant above named by order to show cause dated the 2nd day of April, 1935, for an order modifying the decree of divorce herein by striking therefrom all provisions therein for the future support of alimony to the plaintiff and further granting relief to the defendant under the provisions of C. P. A. section 1172(A); and, for such other and further relief as to the Court may seem just and proper; and, said motion having come on to be heard before this Court on the 3rd day of April, 1935; and, the matter having been then and there argued by George Seagrave Franklin, attorney for the plaintiff, and by Daniel F. Cohalan (George J. Langley, of counsel), for the defendant, and the Court having made an intermediate order herein, on the 3rd day of April, 1935, restraining the arrest of the defendant, except as stated in said order;

Now, on reading the order to show cause dated the 2nd day of April, 1935; the affidavit of William H. Griffin sworn to the 2nd day of April, 1935; and after reading and filing the affidavits of William H. Griffin sworn to the 10th and 15th days of April, 1935, and exhibits annexed thereto; and, due proof of service of all of the foregoing, all in support of said motion; and, after reading the affidavit of Grace H. Griffin, sworn to the 5th day of April, 1935; the [fols. 102-104] order, judgment and decree of Hon. William Harmon Black, dated June 24, 1924; the judgment entered herein in the office of the Clerk of the County of New York on November 19, 1926; and, upon reading and filing the affidavits of Grace H. Griffin, sworn to the 10th and 13th days of April, 1935, and exhibits annexed thereto; and the affidavit of Grace H. Griffin, II, sworn to the 9th day of April, 1935, all in opposition to said motion; and after hearing

Daniel H. Cohalan, (George J. Langley, of counsel) attorney for the defendant, in favor of said motion, and George Seagrave Franklin, attorney for plaintiff, in opposition thereto, and due deliberation having been had; and upon filing the opinion of the court;

Now, on motion of Daniel F. Cohalan, attorney for the defendant, it is hereby

Ordered that the following questions of fact:

(a) the amount of money due from defendant to plaintiff; and

(b) defendant's present ability to pay;

be and hereby are referred to Hon. Jacob Marks, Official Referee, who is hereby appointed referee to determine the same; and that such referee report his findings thereon to the Court for the further action of said Court.

Enter. S. A. C., J. S. C.

Clerk's Certificate to foregoing papers omitted in printing.

[fol. 105] Supreme Court, New York County

Grace H. Griffin, Plaintiff,

against

William H. Griffin, Defendant

To the Supreme Court of the State of New York, Special Term, Part I, New York County:

By an order made in this action on the 18th day of September, 1935, by Hon. Salvatore A. Cotillo, one of the Justices of this Court, the following questions of fact were referred to me: (a) the amount of money due from defendant to plaintiff, and (b) defendant's present ability to pay, with directions to determine the same and report my findings thereon to the court for the further action of said court.

A hearing was had on the 15th day of November, 1935. The plaintiff appeared by George Seagrave Franklin, Esq., her attorney, and the defendant appeared by Conn Cohalan, Esq., his attorney.

A decree of divorce was granted in favor of the plaintiff against the defendant in June, 1924, and awarding the plaintiff the custody of the two children of the marriage and $4,500 yearly for the support and maintenance of herself and children (exclusive of the cost of education of the children). This decree was modified by the Appellate Division in November, 1926, by reducing the provision for the support and maintenance to the sum of $3,900 yearly, payable in equal installments in advance on the 24th day of [fol. 106] each month.

After the decree of divorce, the defendant remarried in Natchez, Mississippi, in November, 1925.

The litigation between the parties to this action has been pending since the year 1923, twelve years, when the defendant, after having been married for upwards of seventeen years, brought an unheard-of, causeless, groundless action to annul his marriage (122 Misc. 837, aff'd 209 App. Div. 83). This action is referred to in the affidavit of the plaintiff (p. 3), verified April 10, 1935, and in the defendant's affidavit, verified April 19, 1935. The affidavits on file disclose that since that time, with great verbosity and by attempted subtlety and fallacy and efforts to thwart the plaintiff in the enforcement of her rights, and by the interposition of a mass of irrelevant matter in his affidavits and his attempts to confuse the issues presented in the various applications, he obliged the plaintiff to be in court almost continuously for the past eleven years, "putting", as she states it in her affidavit, "every ounce of energy into ultimately wearing me down through prolonged court battles". In other words, a reading of the voluminous affidavits will disclose that in addition to his attempts at bewilderment and confusion and his professional artfulness, he has been able, financially and professionally, to call to his aid eminent counsel in his attempts to harass and annoy the plaintiff and to break down utterly her strength and spirit and reduce her to a weak and discouraged, wronged litigant. It is strange that he has not succeeded.

The defendant reflected and paraded his own propensity to sophistry and deceit in the following language, which in [fol. 107] his affidavit he applied to his wife, the plaintiff (p. 5, defendant's affidavit of April 15, 1935): "We find her indulging in the process of intellectual distortion to make the facts just what she needs for her own special purposes."

That fits him. As a trier of facts, I have never personally heard, nor otherwise heard of, a more audacious witness with such brazen effrontery and deceit as that displayed by the defendant before me. He came prepared to force upon or conceal from the plaintiff's counsel and me just so much information as he had prepared himself to give or conceal. Always on the alert, making assertions in the face of all improbabilities, apprehending embarrassing questions before his examiner had time to complete them and glibly attempting to evade and sidetrack further inquiry when he found he was caught in false or inconsistent and improbable statements, it was with great difficulty that any direct answers could be extracted from him. His equivocations, endless in number, his refusals, though frequently cautioned and admonished by me and even by his own counsel to properly answer a multitude of relevant questions, with no effect, the frequent admissions forced from him, showing that he had intentionally tried to deceive with respect to the amount of his income, his confused and improbable and unsatisfactory explanations with respect thereto, his attitude and demeanor while testifying, and a careful reading and consideration of the evidence, have forced me to reach the conclusion that he is utterly unworthy of belief.

Only a person present who watched the proceedings before me can visualize his boldness and audacity in attempting to deceive and thwart the purpose of plaintiff's counsel, [fol. 108] and even of his own counsel, to learn the facts, and this from a lawyer engaged as counsel by domestic and European clients and attorneys. He was cautioned by me and was made aware from time to time that his false statements and manner of testifying were creating a bad impression as to his credibility, but notwithstanding my admonitions his falsehoods continued and he involved himself more deeply in inconsistencies. (pp. 20, 21, 23, 52, 58, 60, 62, 70, 71, 75, 76, 79, 85, 96, 107-109.) So the record fails to disclose the irritation of his own counsel when moved to strike out the defendant's answer to his own counsel's question, (S. M. p. 105), and the look of almost hopeless despair of his counsel after his repeated admonitions and efforts to obtain a proper and truthful reply to questions.

When upon the cross-examination of the defendant it developed that he had concealed substantial items of income from his counsel and had not answered him truthfully, (as his counsel was endeavoring to have him state frankly and

truthfully what his income was) his counsel felt it was his duty to inform me that he was surprised at the disclosures and had not heard of them until the witness mentioned them on cross-examination, and he stated, "At the same time he (defendant) is fooling me." (S. M. pp. 107-109)

In my opinion, the neglect of the defendant to make any further payments since January, 1929, has not been due to his inability so to do, but has been due to contumacy and vindictiveness on his part, coupled with an important contributing cause, namely, his remarriage, with its increased burden and obligations.

[fol. 109] The last payment made by him on account of alimony was in January, 1929, nearly seven years ago. The amount that has become due since that time, from January 24, 1929 to October 24, 1935 (which last date is the nearest earlier date prior to the date of hearing before me when a payment became due), altogether six years nine months, is the sum of $20,250. By sequestration proceedings the plaintiff realized the sum of $5,432 (S. M. p. 10). By order of the Family Court, made on or about and from April 8, 1935, and up to November 8, 1935, the defendant paid the sum of $750. Giving him credit for this payment, although not made under the decree, and giving him credit for the amount realized in sequestration, $5432, it shows the net amount due under the decree from the date of the last payment of $250 on January 24, 1929 to October 24, 1935, to be the sum of $14,818, with accrued interest.

Shortly before the last payment of $250 was received in January, 1929, by the plaintiff, the defendant left this country for France with his second wife, traveling extensively, and continued to live abroad and maintain a residence and law office in Paris or its outskirts for several years. This law office he still maintains. That his practice in Paris was a lucrative one, the extent of which the defendant, however, did not mean to disclose and has not truthfully disclosed before me, may be gathered by one paragraph of his affidavit, verified April 15, 1935, on page 14, in which he states that he had earned in Paris several thousand dollars in fees which he was unable in major part to collect. How many thousands, or what he considers a major part, did not form part of his testimony before me.

[fol. 110] He remained continually outside the jurisdiction of this court from 1929 for several years, until at least 1932, when, according to his affidavit, he returned to the State of

North Carolina, and was first thereafter within the jurisdiction of the court in March, 1934, about the time he surrendered to the District Attorney in a criminal proceeding instituted by the plaintiff and arising out of his alleged abandonment, of which, however, he was acquitted. He claims he again placed himself within the jurisdiction of the court in April, 1935, which is about the date when this present application was commenced.

During all these years it appears by the affidavit of the plaintiff and those submitted in her behalf that she was for years under medical care and had undergone operations and struggled to support herself and children by selling life insurance and earning commissions on real estate, and that said income was entirely insufficient for her and her family's needs, and that she has no other income or property except the earnings of her daughter as a stenographer. Some mention has been made that she is the residuary legatee under a will of a friend, which she swears that she has been informed by her attorneys that it is extremely doubtful if there will be any residuary estate.

In 1930, by an affidavit verified by the defendant while in Paris, he applied to Mr. Justice Walsh to reduce the amount of alimony. This motion was denied, and upon appeal by the defendant to the Appellate Division, the order was affirmed. On May 24, 1933, defendant again moved under Section 1170 and Section 1172 of the Civil Practice Act to modify the decree with respect to the payment of [fol. 111] alimony. This motion was denied by Mr. Justice Ingraham on June 23, 1933, with leave to renew when all arrears and amounts due the plaintiff on account of the children are paid.

No proof has been offered to show a compliance with this order or that, in view of that decision, leave to renew was given. Would the defendant be entitled to any relief upon this application if that decision is still in force? Mention of this decision is made in the plaintiff's affidavit, though whether interposed as an objection to the present application is not made clear. Although the defendant is not entitled to consideration, I recommend later that $6,000 be deducted from the amount now due.

In October, 1933, he obtained a position with the United States Government, but continued to practice law and earn large fees. As his own affidavit shows and as the evidence established, during all these years, from June, 1929 to the

present time, he earned both here and abroad thousands of dollars yearly, not one penny of which did he contribute to the support of his family.

The plaintiff states in her affidavit, "The contempt which the defendant has always shown for this court is just as great now as it has ever been." There is ample ground for this statement. With the record now presented, justice may well remove her hoodwink and lay her hands heavily upon the defendant and make him realize that with all his ample mental and financial resources, he cannot mislead and deceive and eventually squirm out of all compliance with her mandates (as he has for nearly seven years), unless he will again flee from or remain out of the jurisdiction of the courts of this state. At present he writes from Washington, [fol. 112] D. C.

The defendant on the present motion has not shown any change in circumstances or conduct since the prior decisions of this court on his applications for relief identical with that sought on this motion. On the contrary, it affirmatively appears now, what he always concealed from the court before, that while he was earning thousands of dollars from his practice both here and abroad, from which he could and should have made payments for the support of his family, he failed utterly to contribute one cent.

The amounts which the evidence shows conclusively by the defendant's testimony, have passed through his hands since January, 1929, are not a true statement of his income. He could not travel and live here and abroad and maintain an office in Paris and pay large sums for counsel fees in proceedings in and arising out of this action, with this average of about $3,000 in seven years.

His testimony shows the following sums as having passed through his hands from 1929:

1929: Enough to travel, with his second wife, to Belgium, Holland, every corner of France, Spain, Egypt, Jerusalem and other parts of Asia.

1930: Enough to belong to clubs and live fashionably with his second wife in Paris (pp. 53, 94, 95).

1931: Gross income (p. 22)	$4,608.00
1932: Gross income (p. 25)	2,069.20

[fol. 113]

1933: Gross income (p. 26)	$ 745.54	
Additional income (p. 76)	1200.00	
		1,945.54
1934: Gross income (p. 27)	$5405.00	
Additional income (p. 79)	1000.00	
		6,405.00
1935: Gross income (p. 30)	$4,925.00	
Additional income (p. 58)	1,000.00	
		5,925.00
Total which even the defendant concedes		$20,952.74

The letters of the defendant from Paris to his son in 1929 and 1930 show the enjoyment by the defendant and his present wife of fashionable Paris ways. According to his own testimony, he traveled almost entirely in the year 1929 (S. M. p. 35), and his letters show his travels with his wife throughout various parts of France, Holland, Belgium, Spain, Palestine and Egypt.

In October, 1929, he wrote from Paris: "In ten minutes from where we live at a beautiful, historic place twelve miles out of Paris I was at a stable, and in another five minutes I was astride a fine saddle horse trotting away through a large, beautiful forest." This description is quite different from the hovel which in his testimony he painted he owned as a home. He testified he purchased it in 1929 or early in 1930, that it was a small place on two stilts, on two boards over a river, less than the size of the courtroom, that it is five hundred years old and he lives in it in the summer time (S. M. pp. 94, 95).

There being no record among the papers on file and no [fol. 114] books or records produced by the defendant from which the court could determine what the yearly income of the defendant was, his counsel started to ask him what his yearly income was in 1929. At once he tried to evade the question, his answer being "From all sources it was a loss." (S. M. pp. 20, 21). Refusing to reveal his financial condition or so that I could determine whether it was a loss or not, no answer could be obtained. All he would say was, "I know

connection with your gross income for that year?" "A. $1,862.80." These expenses were for his Paris law office, which he still maintains, but no figures have been offered to show what the returns have been from that office since the defendant left it in 1932, although he has a clerk still employed there. He first answered that he maintained his Paris office until quite recently (S. M. p. 28); that he had it under lease for nine years from 1929. He could not give the amount of rental (S. M. p. 29). He testified that the [fol. 116] expenses of $1,862.80 included office rent, clerk's salary and petty disbursements. Having testified that until quite recently he maintained that Paris office, he stated: "In Paris I maintain an office and have a clerk on part time to take care of matters that have arisen in connection with my practice there and other matters that must necessarily be attended to." (S. M. p. 30) But again, no information as to the extent of that business.

Then having reached the year 1935, he was asked what his income was for that year, 1935, to date. The date of the hearing was November 15, 1935. The witness answered: "I have figured it to October 1st, not knowing when this hearing would come on, and that amounts to $4,425." (S. M. p. 30) But up to November 1st, not having included his October salary, according to his figures it would amount to $4,495 (S. M. p. 31). But with a United States Government salary commencing in 1933 at $366.66 per month and increased until it reached $500 per month in 1935, he still refused to comply with the order of the court and still left his family without contributing one dollar to their support. From this income of $500 a month, or $5,000 to November 1st, the witness estimates the expense of his Paris office amounts to about $100 a month (S. M. p. 31).

Now we come upon a most ingenious, subtle and measured attempt to fool this court. Defendant, a member of the New York Bar for nearly thirty years, seeks by all of his skill to bewilder and mislead, not only the court, but also his own counsel.

[fol. 117] P. 30:

> "Q. For the year 1935, have you your income to date? A. I have figured it to October 1st, not knowing when this hearing would come on, and that amounts to $4,425.00 * * *."

it was a loss" (S. M. p. 21); "I cannot at this time give that a specific answer" (S. M. p. 22). So that for the year 1929 it is safe to assume that his income was at least the same as when the decree was entered.

A similar situation developed with respect to the year 1930. He was asked, "How much money from all sources, professional, private income, if any, came into your possession in the calendar year 1930?" No reply was made, no information given, no records produced, his irresponsive answer having been stricken out (S. M. p. 22).

For 1931 he testified his gross income from professional services in France was $4,608 (S. M. p. 22), and that his expenses were $2,262.

For the year 1932 he produced no records, but testified that his income was $2,069.20 and expenses $2,182.61.

For the year 1933 he testified he had no income except his salary from the United States Government, commencing in October, 1933, and that his total gross income for 1933 was $745.54 (S. M. p. 26), and then followed a most strange answer to this question by his counsel: "Q. What expenses did you incur in the year 1933 in connection with obtaining that income? A. Professional expenses $1,685.20." (S. M. [fol. 115] p. 27).

It appeared, however, upon cross-examination, just plainly dragged from the witness after pages of effort, that for that year he concealed a large fee, of which plaintiff's counsel had knowledge, but which the defendant was not willing to disclose, and in my opinion was not truthfully disclosed.

It will appear by his cross-examination that in 1932 and 1933 he collected judgments for fees which he failed to disclose on his direct examination, and even failed to disclose to his own counsel, causing his own counsel, even, to offer an apology to me for his failure to have brought it out.

In the year 1934 he testified his gross income was $5,405.26 (S. M. p. 27). I asked him, "How much of the $5,405.26 is salary from the Government?" He replied, "I would have to figure that out." Then followed this statement, "For 1934 it was all salary—nothing else—in varying amounts." (S. M. p. 27). At first he said this sum of $5,405.26 was "principally from Government salary" (S. M. p. 27). He could not be truthful. Then followed this question by his counsel: "What expenses did you have in

P. 31:

"A. The month of October was $500 gross * * *

"The Referee: Up to November 1st we will take it, $4,925."

P. 32:

"Q. Have you any other income from any other sources than you have testified at the moment? A. No, I haven't.

"Q. Of any nature. A. No.

"Q. You have no other income outside of what you have testified to? A. No."

P. 57:

"Q. Have you engaged in any practice, private practice since then (October 12, 1932)? A. No, except things, matters that have come up currently. I mean from past services and one other instance. In other words there have been some very small amounts that have come in from work prior to my return (October 12, 1932).

"Q. Have you done any appeal work for other lawyers since you came back to this country? A. In one instance.

"Q. What was that? A. I argued an appeal.

"Q. When was that? A. This past month * * *

"Q. Is it the Waxey Gordon appeal? A. A man by the name of Puenti retained me * * *

"Q. How much did you receive for that? A. I received from him the sum of, on the 7th of October, the sum of $1000, less expenses."

Then, after two pages of evasions, we find:

[fol. 118] P. 59:

"The Witness: So that the net there would be a little over $900 * * *"

P. 61:

"Q. When did you first discuss the Waxey Gordon appeal? A. In the summer (1935)."

(a) The defendant swears that he came prepared to testify as to his income down to October 1, 1935, "not knowing when this hearing would come on."

(b) Notice, setting this hearing down for October 28, 1935, was duly served upon defendant's attorney on October 18th. Stipulation was signed, by attorneys for both parties, on October 21, 1935, setting the actual date of November 15, 1935.

(c) Defendant testifies that he has no income, other than salary, for the year 1935 (p. 32); and, that his gross income (p. 31) for October, 1935, is $500—not a word said about any fees or judgments for fees collected.

(d) On cross-examination (p. 59), the fact is dragged out of him that (1) he did have another source of income, and (2) that on October 7, 1935, he received a net fee of over $900 for arguing the Waxey Gordon appeal.

The defendant's conduct in concealing these important facts relating to the Waxey Gordon appeal is more than ample reason for disregarding all of his testimony; further, defendant's misstatement under oath, of the facts of his income for October, 1935, at $500 gross, coupled with the admission of a $900 fee on October 7, 1935, in my opinion [fol. 119] merits more serious consideration than a finding that with other concealments his testimony throughout is incredible. The defendant's counsel had no part whatever in this concealment and misstatement by his client. He was as much surprised as I was as the defendant's false testimony was being forced from him, page after page.

In the year 1935, defendant paid plaintiff the sum of $750, which was ordered by the Family Court, to prevent plaintiff and her son from becoming public charges. The conceded sum of income for part of 1935 was $4,925, being $1,925 greater than that ordered by the court for 1935.

The defendant has knowingly concealed his personal records in his Paris law office, so as to prevent their inspection by this court.

Defendant concedes that he has a law office in Paris, which cost him (p. 24) $2,262, in 1931; (p. 25) $2,182.61, in 1932; (p. 27) $1,685.20, in 1933; (p. 28) $1,862.80 in 1934; and, up to October 1, 1935, the sum of $998.30 (p. 30). The lease on that office runs from 1929 to 1938 (p. 28).

Defendant concedes that he received a detailed notice to produce, calling for all records of income and expenses from January, 1929, to the present (p. 66).

"Q. Do you have those bank books and check books in your possession? A. They are in Paris.

—— A. Yes, I have them there." (S. M. p. 68)

At page 81, after about six pages of evasions and contradictions, to put it mildly, a concession is dragged out of [fol. 120] defendant that he has numerous claims against numerous clients; that he has obtained a judgment or two for many thousands of dollars; and that he has claims against many more. These facts were concealed on direct examination.

P. 81:

"Q. Please give me a list of your fees collectible and uncollectible, which have been due since 1929, regardless of your opinion as to their collectibility? A. I can't do that offhand. The records are in Paris, services rendered there for clients, bills unpaid * * *.

Q. You have known for seven months this hearing was going to come about? A. Yes.

Q. And you knew you were going to be before an Official Referee seven months ago? A. Right.

Q. You didn't bring a record back from Paris? A. They are all under lock there."

P. 85:

"By the Refefee:

Q. It (the Paris office) isn't locked, is it? A. Yes, sir.

Q. Doesn't the clerk go to that office? A. Yes, sir.

Q. Then it can't be locked if the clerk goes to the office. A. I mean——

The Referee: It is only another type of your trying to evade and fool the court——

By Mr. Franklin:

Q. All I am referring to is records of your income from your business. A. She (the clerk) had no access to those."

On defendant's direct examination no mention was made of his obviously lucrative business, entirely apart from his excellent salary paid by the Government. From the strange [fol. 121] episode of the McCarthy cases, we glean a sample of the real reason why defendant left or sent his personal records to Paris.

The fantastic story grows apace. He concealed his Waxey Gordon fee. Prior to that episode he collected other sums which he deliberately concealed in giving his testimony.

> "Q. Did you ever hear of a man named McCarthy down in New Orleans? A. Yes——
>
> Q. You sued him for a fee of $10,000? A. I sued him for a fee, I think it was larger than that——." (S. M. p. 73)
>
> "A. Ultimate collection was around net $1200." Then he added the word "gross". (S. M. p. 74)
>
> "The Referee:
>
> Q. When was it, what year?
>
> The Witness: I think in 1933, if I am not mistaken." (S. M. p. 75)

Reverting back in the record to his 1933 income:

> "By Mr. Cohalan:
>
> Q. For the year 1933, what if any income did you have gross and from what source? A. For the year 1933 I had no income at all until I secured employment with the United States Government beginning in late October, 1933. * * * A. My total gross income for 1933 was $745.54." (Obviously 2½ months' salary from the Government) (S. M. p. 26)

P. 76, cross-examination on the newly-discovered $1200 fee:

> "Q. Did you tell your counsel, Mr. Griffin, that was part of your income (for 1933) when he asked you that question? A. No."

Obviously his income for 1933 was at least $1200 greater than $745.54.

Another fee, in 1934, is discovered, which defendant con-
[fol. 122] cealed on his direct examination.

P. 77, cross-examination:

"Q. Did you ever go to Seattle to collect a fee? A. Yes.

Q. Did you bring a lawsuit out in Seattle? A. Yes.

The Referee: When?

A. The lawsuit was brought before I left Paris in early 1933, if I am not mistaken.

Q. What was the amount of the judgment you got in Seattle? * * * A. Somewhere around $7600."

P. 78:

"Q. How much did you receive from your attorney in that case? A. I think around $1000."

P. 79:

"Q. What year did you get the $1000? A. I do not recall. It was early in 1934, I think.

Q. Did you tell your counsel that was part of your income for that year (1934) when he asked you that question? * * * A. (a few lines down) No. * * *."

Reverting back to the record for his 1934 income:

P. 27. By Mr. Cohalan:

"Q. You have figures for the year 1934 showing your gross income and expenses connected with it? A. My gross income for 1934, as indicated on a detailed statement prepared, amounts to $5,405.26 * * *.

The Witness: (bottom of page) For 1934 it was all salary, nothing else, in varying amounts."

Obviously, the McCarthy recovery of $1,000 in 1934 was not salary.

His own counsel's believe in the incredibility of his
[fol. 123] client's testimony was frequently not only apparent, but express. P. 107:

"Mr. Cohalan: What I want to do is limit the number of jurisdictions he is suing this fellow (McCarthy) in.——

The Referee: He has answered it three times, but he is trying to evade and conceal and trying to fool me as to the amount he received. He is trying to minimize it—as if he received nothing.

Mr. Cohalan: At the same time he is fooling me."

P. 109:

"Mr. Cohalan: I never heard of McCarthy until half past eleven this morning." (about the time plaintiff's counsel brought it out on cross-examination)

"The Referee: No, no. You know what he is trying to do. You know he is trying to evade. He will not answer truthfully."

The witness testified that the traveling expenses abroad in 1929 and 1930, as disclosed by the letters, were paid by his wife (S. M. p. 50). If this is so, his net income was net. He did not have to pay anything for living expenses, and yet he contributed nothing to support his family here. He testified his present wife pays the rent (S. M. p. 52), and a fair deduction that the defendant would have me make from his testimony is that she supported him out of her funds, or, as he would put it, that he borrowed money from her to pay the rent (S. M. p. 52). "Q. Did she contribute to the support of herself and yourself? A. I obtained—I borrowed money from her." (S. M. p. 51). He contributes for the support of his second wife $50 to $75 monthly (S. M. p. 56), money that should be applied to the plaintiff and her children, and his salary has been $500 monthly while he was earning and receiving other large fees. He stated that the [fol. 124] joint expense of himself and wife ranges from $75 to $150 monthly (S. M. p. 56).

He still has a clerk in his Paris office, to whom he pays 1,000 francs monthly. After referring to "him" and leading me to believe the clerk was a male clerk (S.M. pp. 82-86), he changed the pronoun to make it appear the clerk is a female (S. M. p. 86). Although he pays rent for this office and pays his clerk 1,000 francs monthly, he stated that he expects no returns from clients (S. M. pp. 83, 84). His explanation for maintaining this office is so highly improbable that I reject his testimony as to that matter also as false and a concealment of facts. Although he had testified, at page 82, that occasional tax matters of clients are being at-

tended to by this clerk (S. M. p. 82), he claimed in the same breath that he has not received and does not expect to receive any income from the clients (S. M. p. 83). But he modified this statement later when he was asked, "Do you expect any return for any services that this clerk is rendering to you since you have been paying him a thousand francs a month?" "A. If I can get the returns over here, yes." (S. M. pp. 83, 84) Is this a fair, honest answer?

He has on these applications paid large counsel fees, one of $1,000, and paid or incurred two others of $500 (S. M. pp. 88, 89, 90), and his present attorney expects to be paid.

The money to pay the $1,000 fee referred to he claims he borrowed from his wife. This statement he changed by saying she paid the fee and he repaid her out of the fee he received in the Gordon appeal (S. M. p. 88). I do not believe this explanation. He paid it directly out of his own funds. In addition to the fees received by him from clients [fol. 125] and those earned and being earned by his Paris office, he has another action pending to recover $15,000 for professional services rendered (S. M. pp. 80, 81), and unpaid bills of clients in Paris of at least three or four thousand dollars (S. M. p. 81).

He must keep records of his receipts and disbursements. He was served with a notice to produce, but failed to produce any. He tried to foist his make-up of figures as evidence. If his testimony that he relies for support partly or entirely upon his present wife is to be given any weight, if it is to be considered in the least respect true—and I do not believe it,—then his financial condition is better than it was before he married her.

He has culpably failed to establish that his condition has in any way changed, so far as his income is concerned, from what it was at the time of the entry of the decree. He has wilfully testified falsely upon a material question sent to me for inquiry, his financial condition, which can be determined only upon his earnings. He attempted to dispose of some of his admitted surplus income for the years 1934-1935 by claiming that he paid his present wife $100 monthly on account of money borrowed previously.

The extent of his travels, as he admits, the maintenance of his Paris office, his practice of law and receipt of large fees in addition to his salary from the United States Government, his manner of living while abroad, his membership in clubs and maintenance of brokerage accounts (S. M. pp.

98-100), his ability to pay large counsel fees for litigation made necessary solely by reason of his neglect to obey the [fol. 126] order of the court, all lead me to believe that he must of necessity have earned and be possessed of vastly more money than he admitted. He has shown a contemptuous regard of the order of the court in the face of the facts, according to his own admissions, of moneys received out of which he could have made substantial payments on account of the sums due to the plaintiff in the past seven years.

The order of reference requires me to determine (1) just how much money is due. That question is answered by stating that there is due the sum of $14,818, exclusive of interest. (2) As to the defendant's present ability to pay, I report that no credible testimony has been offered by him to show his inability to pay. I find that he always has been of sufficient financial ability to pay the sum of $3,000 yearly directed by the decree and is also financially able to discharge the arrearage which he has wilfully and contemptuously permitted to accumulate.

In view, however, of the fact that one of the children, the daughter, arrived of age on March 15, 1930, I recommend a reduction of $1,000 yearly in the future alimony, payable to the plaintiff for the support of herself and son eighteen years of age, and if any relief can be granted in view of the outstanding decision of Mr. Justice Ingraham, I would recommend a reduction of $1,000 yearly as a condition of purging himself from contempt, this reduction to date from March, 1930, so that the defendant will receive the benefit of $6,000 reduction of arrears, leaving the sum of arrears payable ($6,000 deducted from $14,818) $8,818, with interest, which should be paid in monthly installments of $200 in addition to $166.66 monthly, if my suggestion should be adopted by the court that the alimony be reduced to $2,000 a year.

[fol. 127] With the brief submitted by plaintiff's counsel, he submitted a letter in which he states that since the close of the hearing the plaintiff received a copy of a letter from Mr. McCarthy to the defendant, enclosing a check for $5,000, within the period covered by the hearing before me—that is, as I judge, during the period the defendant's income was being inquired into. The defendant did not disclose the receipt of this check in his testimony.

I cannot give this letter any consideration, but in view, as counsel states, of the importance of this information,

I suggest that the matter be presented to the court by affidavit upon the motion to confirm this report, so that opportunity be given to the defendant to explain why he did not mention the receipt of this $5,000 fee. The plaintiff's attorney's letter to me, of which a copy was sent by him to the defendant's attorney, is also herewith submitted.

I also return, unopened, a letter addressed to me purporting to be from the defendant. He knows that as a party to a litigation he has no right to communicate with me while I am considering the disposition of a matter in which he is personally interested. He is represented by an attorney, and any communication he desired to make should be made through his attorney, and by consent of plaintiff's attorney or with his knowledge. I am not interested in what he may personally now have to say. The sealed envelope, so mailed to me by the defendant from Washington, is also herewith filed.

A copy of the stenographer's minutes was obtained by each of the parties, and I have no doubt one copy will be [fols. 128-129] submitted to the court when this report is considered.

Dated, January 7, 1936.

Respectfully submitted, Jacob Marks, Official Referee.

Clerk's Certificate to foregoing paper omitted in printing.

[fol. 130] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DEFENDANT'S REPLY TO "NEW" EVIDENCE OFFERED BY PLAINTIFF—Filed March 13, 1944

On the first pre-trial hearing herein, held March 7, 1944, plaintiff's attorney without prior notice to defendant, presented to the pre-trial Justice by oral statements and by documents certain "new" evidence, mostly irrelevant and wholly immaterial, but well designed to bolster his tactics of prosecuting this suit, not by discussing the merits, but

by smearing defendant, and thereby prejudicing the court against defendant.

It is defendant's inalienable right, guaranteed by the Federal Constitution, the law of the land, and the Rules of this Court, to have an opportunity to reply to and to refute such "new" evidence.

The "new" evidence offered by plaintiff on March 7, 1944, presents three startling innovations in judicial procedure and variations from established concepts of proper professional conduct, all violative of defendant's rights.

(1) For the first time on the oral argument on the pre-trial hearing, plaintiff's attorney offered to the pre-trial Justice three papers purporting to be authenticated copies of records in the New York Supreme Court. The Justice hesitated to receive them, but defendant did not object because in certain parts they were material and confirmed the Offers of Proof filed by him herein on Feb. 23, 1944, but on condition that he would have opportunity to reply to them in refutation of any false matter in them. The pre-[fol. 131] trial Justice finally received the documents, but orally denied defendant the right to reply to them. A motion to correct that erroneous ruling accompanies this document.

(2) In the course of the oral argument, plaintiff's attorney called the attention of the pre-trial Justice to a report in 2 N. Y. S. 2d, p. 36, of a decision of a New York Court disbarring defendant from practicing law in New York—ten years after he had voluntarily discontinued all professional activities there in disgust at the deterioration of Bench and Bar in that jurisdiction, and on grounds wholly false and fabricated as a part of a conspiracy which had run for eight years to defraud defendant of relief from inequitable alimony burdens allowed by New York law. Prior references by plaintiff's attorney to the fact of such disbarment, which defendant had castigated as a wholly irrelevant maneuver in plaintiff's smear campaign to win by creating prejudice, were attempted to be justified on this occasion by smearing the Justices also.

(3) Plaintiff's attorney narrated to the pre-trial Justice his ex parte, hearsay, gossipy version of a private interview which he claims to have had with the Chief Justice of this Court, on a development in this litigation, but in the ab-

sence of defendant, and of a remark purported to have been made in such private interview in defendant's absence, without any proof of the propriety of the interview, or the competency of its subject-matter, or the tender of the Chief Justice for direct statement and cross-questioning.

Of course, it may be that defendant's objections to those three occurrences are based upon a concept of professional and judicial proprieties which are now entirely outmoded and no longer respected, and supplanted by a new standard represented in the latest addition to the New York Supreme Court Bench of an Italian out of the lower East side of New York benefiting by the Tammany spoils system, hand-[fol. 132] picked for that high position by the recent leader of Tammany (since deposed) under the persuasion (a euphemism for duress) of a notorious underworld criminal named Costello who quite recently was identified in the public press (see Washington Evening Star of March 2, 1944) with a gang of murderers for hire under the euphonious title of "Murder, Incorporated," who have been accused of having committed not less than 80 murders for pay, and three of whose members (one Lepke and one Weiss, Jews, and one Capone, Italian) were electrocuted at Sing Sing Prison on March 4, 1944, on conviction for one of such murders. So, if defendant's old-fashioned concepts are at variance with those now dominating the Bench and Bar, that fact and his inability to adapt himself to the new styles will explain his persistence and his method in pursuing, and in protecting, his constitutional rights.

And now, in elaboration of his objections to the three occurrences above enumerated, and in refutation of any superficially derogatory "facts" or prejudicing inferences:

(1) The mere fact that the documents offered by plaintiff's attorney are authenticated court records vests them with no sanctity or immunity from attack for fraud or lawless unjudicial conduct in the concoction of one of them. These new documents consist of two orders of Supreme Court Justice Cotillo both dated September 18, 1935 (the first of which has slight if any bearing in this suit) and the report of one Jacob Marks, Official Referee, dated Jan. 7, 1936.

The second order of Sep. 18, 1935, is relevant on the specific offer of proof in paragraph 31 of the Offers of

Proof presented by defendant filed herein Feb. 23, 1944, and now before the pre-trial Justice for disposition. Said order states on its face that plaintiff appeared "in opposition thereto" and that it was made "on motion of Daniel F. Cohalan, attorney for the defendant," when in fact [fol. 133] said order was prepared by plaintiff's attorney and submitted to the Court under his own office cover (legal documents in New York are backed) with the consent and connivance of the attorney then professing to represent defendant and in violation of the specific instructions received by him from defendant and as a part of his sell-out to plaintiff and the political pals in Tammany working in her behalf; Daniel F. Cohalan was not then attorney for the defendant and could not have been, since he had meanwhile been made an Official Referee; and even if the document had been prepared by the attorney professing to represent defendant and the motion made by him, that also would have been in direct violation of defendant's instructions to him. But the document is material also in that it delimits the scope of the reference and the authority of the Referee to a determination of the amount of money due and defendant's ability to pay, and highlights the officiousness and excesses of the Referee in going far beyond those limits and his jurisdiction and authority.

The injection into this suit of the entire report of Referee Marks, particularly those greater parts representing his excesses and which are wholly irrelevant, rather than limiting the offer to its material part, which supports defendant's offer of proof in paragraph 33 of the Offers of Proof presented by defendant filed herein Feb. 23, 1944, is a matter of serious concern to defendant demanding detailed discussion and refutation. Such irrelevant parts of that report merely add another link in the long chain of corrupt acts by a group of politicians in Tammany from and after December 1929 to defraud defendant of his right to an initial modification and ultimate nullification of the alimony provisions in the original divorce decree—rather than adding alimony to death and taxes as things from which this life affords no escape.

Clarity will be aided by the statement that Marks is the [fol. 134] product of a similar ghetto-like background and environment as his racial brother Lepke, the guiding genius of Murder, Inc., whose illustrious career was editorialized in the Washington Post of March 9, 1944. And see New

York Times of March 5, 1944. Which brings up for debate the proverb that "A silk purse cannot be made out of a sow's ear." To the extent that external appearance provides an index to character, it would be difficult to make a choice between those two citizens. But Lepke pursued a career outside the law relying on the play of gunmanship that, despite his political connections, landed him last Saturday night in the electric chair; while Marks pursued a career within the Tammany standards of law relying on the play of politics that, because of his political connections, landed him on a minor court bench in New York and later, through the favoritism of his political friends in the Appellate Division of the Supreme Court whose unconscionable act of disbarring defendant was initiated by Marks, provided him a berth with a pay as an Official Referee of that Supreme Court. And anyone reading dispassionately the record of the proceedings before that Referee can easily judge whether Marks in the pursuit of his purposes had any more regard for the reputation of defendant than had Lepke in the pursuit of his prices for the lives of his victims.

Marks was the last man on the extensive list of Referees that defendant would have chosen to hear his alimony application; but he was the first to be chosen by his political crony professing to represent defendant, in direct violation of defendant's specific instructions.

At the opening of the hearing before him, said Marks mounted the bench bristling with bias against defendant, whom he had never personally known and then saw for the first time. Defendant quickly suspected that he had been primed in private conversations prior to his official [fol. 135] appearance, and that the Tammany practice of hand-picking had played a controlling part in his selection for that hearing, and for furthering the conspiracy to defraud defendant. The ensuing proceeding was a travesty and a mockery of judicial processes. Defendant was at no time allowed to give a consecutive narrative of his financial affairs extending back for several years in various conditions of stresses and circumstances; he was continually interrupted by the Referee whenever his testimony failed to conform to that desired, or preconceived, by the Referee for his particular purposes; and the slightest hesitation to remember and relate in detail any one of the myriad incidents during those many years provoked him to remark

that defendant was not telling, and would not tell, the truth. He even made several efforts to browbeat defendant into giving testimony to serve his purposes—when such testimony would not have been true. He interrupted not less than 13 times in the 15 pages of testimony covering plaintiff's case, and not less than an additional 139 times during defendant's case, or a total of more than 150 times recorded on 113 loosely typewritten pages of the minutes of the hearing. His whole bearing was officious, arrogant and insolent, and wholly devoid of judicial poise and impartiality.

The ensuing report, replete with false statements and assumptions and distortions of fact, is a true reflection of his bigotry and bias and ruthless unjudicial attitude. A few illustrations help to emphasize those characteristics:

The Referee construed as false testimony by defendant a statement that "he had earned in Paris several thousand dollars in fees which he was unable in major part to collect." Only such a warped mentality could construe *uncollected* fees as income. Defendant's reference there was to earned fees totaling more than Twenty-five thousand dollars due from one McCarthy, a litigious Irishman of large [fol. 136] wealth. After receiving defendant's services, and also hearing from this plaintiff as defendant was reliably informed by the attorney appearing for him, McCarthy refused to pay defendant's bill, rendered at the same rate of charge as previous services for which he had paid promptly after rendition of bill. One of two suits for such unpaid bills resulted in the receipt by defendant after judgment and deduction of his attorney's fees and court expenses of around $1200, which was less than the expenses which defendant had incurred personally (including travel from Paris, France, to Seattle, Washington, for the trial) in the prosecution of the suit. The other suit, for $15,000., was not prosecuted after—and because of—defendant's disbarment, but was settled with the McCarthy Estate for $1,000 through the friendly relations of the respective attorneys. Such are some of the losses sustained by defendant from plaintiff's pursuit of revenge rather than revenue, in contrast with the fanciful income with which the Referee invested defendant. And with the consequence that plaintiff has secured revenge rather than revenue even while making sworn statements in court, in

1929 before the grand jury and in 1935 before the Domestic Court that she was in destitute circumstances. For contrariety, they were a well-matched pair.

The Referee's emotional outpouring of sympathy for that sick and struggling plaintiff should be contrasted with the fact, sought to be established by defendant's interrogatories to plaintiff, that she had lived continuously since around 1925 until at least the commencement of this suit in a high-class apartment building just off Park Avenue, New York City, first in an apartment at a rent of $1300 a year and later in another in the same building at a somewhat lower rent, and during such period also employed a maid.

The Referee, again within the restricted limits of his cerebral capacity, could not conceive that defendant could employ competent counsel without being so wealthy as to falsify his testimony of his actual resources. The [fol. 137] lack of logic is appalling: there was a time when the ablest attorneys would accept and defend a just cause for little or no compensation, but those instances now are rare, and the employment of competent counsel now more often means impoverishment rather than enrichment. That has certainly been defendant's experience. Then, too, counsel fees can be paid from other sources than the litigant's own personal income. So, the Referee almost had a heart attack when defendant testified that the $1,000 fee received by ex-Justice Cohalan was arranged for and paid by defendant's wife, and was revived only to remark that such testimony was false and incredible. His report states, "I do not believe this explanation." His incredible low caliber is further attested by the fact that Judge Cohalan meanwhile had become an Official Referee and associate of Marks, and Marks had only to go to his adjoining office to secure conclusive verification of defendant's testimony on that transaction. But he did not want confirmation of defendant's testimony: he preferred to run wild with the conspiracy to defraud defendant.

Similar incredible obtuseness caused him to characterize as false defendant's assertions of reduced income through 1930, 1931 and 1932—years of the great depression of unhallowed memory with all citizens not occupying a feathered nest at taxpayers' expense provided by political favoritism, with its widespread devastating effects on such citizens, inevitably including defendant, without giving any con-

sideration to the consequences of plaintiff's interference with his clients. Such craven characters unconscionably concoct "mental and financial resources" in defendant ample for "all compliance with [the Court's] mandates" and then with a pompous display of pseudo-probity pantificate that "justice [of the Tammany type] may well remove her hoodwink and lay her hands heavily upon the defend-
[fol. 138] ant"—to quote certain particularly sulphurous vaporings of this "judicial" monstrosity. His benefactors and friends on the Appellate Division Bench carried that corrupt process still further in laying their hands heavily upon the defendant when the disbarment proceeding was not effective as an alimony collection agency.

The episode involving the attorney misrepresenting defendant on that hearing, which is partially quoted in the Referee's report from pages 107 and 109 of the minutes of such hearing, illustrates the confusion created by the Referee and the caliber of the attorney. Defendant at that time had collected in only one suit against McCarthy. So late as the evening before the hearing, defendant gave to his attorney a detailed memorandum covering the McCarthy transaction and the suit in Washington State, omitting only the name of the client, not with any malintent, but solely because he considered it immaterial. So the attorney's profession of ignorance on the subject and statement that "At the same time he [defendant] is fooling me", was the product either of neglect to read the memorandum in preparation for the hearing, or inability to absorb it or to remember it overnight, or of a decision to cast his lot with the Referee as an influential political associate in Tammany even at the expense of stultifying and betraying his client. Of course, any attorney of integrity would have resisted even a justified provocation to turn thus publicly upon his client and charge bad faith in their private confidential relations. The whole policy of the law protects such confidential relationship, while this attorney without provocation prostitutes it. That conduct became understandable when it subsequently developed that he had already sold out to plaintiff and her attorney and his political pals in Tammany.

The bigotry of the Referee shows in his remarks that defendant "contributes for the support of his second wife [fol. 139] $50 to $75 monthly (S. M. p. 56), *money that should be applied to the plaintiff and her children*" (italics

ours), and that "In my opinion, the neglect of the defendant to make any further payments * * * has not been due to his inability so to do, but has been due to * * * an important contributing cause, namely, his remarriage, with its increased burdens and obligations." To his sordid soul, plaintiff's failure to observe the reciprocal obligations of their marital relations and of the divorce decree, her theft of the respect and affection of the children, and her frauds throughout the entire relations with defendant, culminating in her effort to make him a felon, meant nothing to him against his conscienceless urge to aid his political pals to wreak their imperious will on defendant. To that end, defendant should be kept in permanent bondage if necessary. And it means nothing to him that the laws of every State in the Union other than New York authorized and encouraged a different future for defendant—which fortunately he has enjoyed now for more than eighteen years. The fact which his coarse, craven nature prevents him from seeing, is that defendant's remarriage has had absolutely nothing adverse to do with his relations with plaintiff in the inception or at any time in the interim: instead from it he has acquired a charitable attitude toward plaintiff's unscrupulous conduct that he would not otherwise have had, and is certainly not one whit more determined to defend himself against her continuing depredations. In other words, while his remarriage has given him vastly more than he would have otherwise had, it has taken nothing whatever away from anything that plaintiff would have received had he not remarried. So, again, the Referee's mental processes are wholly irrational and irresponsible,—and somewhat inappropriate as applied to "her children", one of whom was then 26 years of age and self-supporting, the other of whom was then 18 years of age and capable of self-support, two years later than defendant ceased to call upon his father, and neither of whom under [fol. 140] plaintiff's influence has exhibited even the elementary filial attributes. When one considers Hebraic tradition and family traits in that regard, this Referee must be a renegade in his own race to display such bigotry in such circumstances.

In reporting that plaintiff's attorney was in direct communication with him after the close of the testimony and in defendant's absence (a fact which defendant first learned from such report) about a check for $5,000 given by Mc-

Carthy to defendant within the period covered by the hearing, and adding that "The defendant did not disclose the receipt of this check in his testimony," he professes, * [*not to have given that communication any consideration*] as a

* Matter in brackets struck out in copy.

cover for the impropriety of receiving plaintiff's ex parte communication instead of reconvening the hearing for an orderly presentation of any additional evidence which plaintiff had to offer and protecting defendant's rights in the premises, not to have given that communication any consideration; but the truth or falsity of that profession should be tested by his other statement that "It affirmatively appears now, what he always concealed from the court before, that * * * he was earning thousands of dollars from his practice both here and abroad". That gross distortion may also result from the well-known Hebraic characteristic of being able to make money in business whatever the method pursued—a characteristic which defendant does not possess and which he would be scrupulous in exercising if he did possess.

Contrasting with the Referee's remarks is the very simple fact which cannot be refuted that defendant had been asked by McCarthy to go on business for him to America from Europe, first to Chicago, then to New Orleans, then on to Spokane and Seattle, Washington, thence to Los Angeles and San Francisco, and from there back to Paris, and the disbursements on that trip for traveling, etc., exceeded $9,000., which were covered by the $5,000 "concealed" pay-[fol. 141] ment just before he left Paris, additional payments in America, and a final payment after defendant's return to Paris. In other words, not one cent of that $5,000 was ever a fee or income in fact to defendant, even though it was so considered by the corrupt Tammany politicians holding judicial positions in New York. And as it had never been defendant's practice at any time in his professional career to treat as fees any funds given him for any special or fiduciary purpose, or reimbursements of cash outlays, it never occurred to him on the reference to report that payment as income which could be diverted to pay plaintiff. What McCarthy paid defendant as fee was reported, and what he refused to pay after he heard from plaintiff was

included in the two suits which defendant reported on the reference.

Thus we discover that the Referee's characterization of the defendant's testimony before him is the child of the Hebraic mentality—displayed also by Hitler and his Huns against the Jews—of creating in their own unbalanced minds hallucinations no matter how false which justify their desired ends and then driving ruthlessly to those ends on such concocted justification. So many of them employ that technique in their material acquisitions (as when they resort to bankruptcy just after they have secreted the major part of their assets) as in their disregard of established standards in their pursuit of professional success. We have an instance of that trait in this suit in the injection of irrelevant prejudicial matter and in the attack on defendant's Offers of Proof while offering documents which support the very Offers of Proof which he attacks. Such characterizations by the Referee were of course as false as his capacity to perceive the truth was frail. They are certainly not the utterances of judges of impartiality and integrity.

And that brings us to another feature of the report, happily of a redeeming character, even though it may be [fol. 142] the product of the queer anomalies and contrarieties so often found in the Jews and the Irish, particularly those of the coarser stratum. Even while he exhausted expletives in his condemnation of defendant without conscience or scruple or justification and paid no regard whatever for the limitations of the submission to him and the scope of his authority, he wrote

"Although the defendant is not entitled to consideration, I recommend later that $6,000 be deducted from the amount now due",

and he did later actually so recommend, as defendant quoted in paragraph 33 of his Offers of Proof filed February 23, 1944, and $2,000 yearly in future alimony. And that recommendation, accepted by Justice Cotillo, but omitted from the order which was presented to him by the two attorneys conspiring to commit a fraud upon him and upon defendant, alone vitiates the "judgment" in suit here which rests squarely upon that Cotillo order so fraudulently procured. If it becomes desirable, defendant can

prove many additional and precise details of the conduct of such two attorneys in that connection. As they are numerous, to do so now would needlessly lengthen this reply.

In concluding this subdivision of the reply, defendant should remark that such quoted recommendation is the only part of the Referee's report that is at all material to this suit. Defendant naturally assumes that the pre-trial Justice will not accept the diatribes of the Referee against defendant as the equivalent of a Delphian Oracle, either by accepting the Referee's statements as proven facts or by allowing them consciously or unconsciously to operate prejudicially to defendant, as is so evidently the scheme and design of their introduction in entirety.

The Referee having revealed that one spark of judicial integrity and correct conception of the law—that defendant was entitled as matter of law to a reduction of $1,000 in future alimony, because the daughter had arrived at age—defendant purposely in his Offers of Proof filed Feb. [fol. 143] 23, 1944, paragraph 33, limited his references to Marks to such material part of his report and withheld these caustic comments on Marks' general low caliber. They have now been provoked only by the smear tactics of plaintiff's attorney in this suit in offering the entire report. Evidently, he is not interested in addressing his efforts here to the legitimate issues in the suit—(1) Was defendant entitled under the Due Process Clause to notice of plaintiff's application for the "judgment" in suit here and to opportunity to be heard? (2) Does the Full Faith and Credit Clause bar defendant from attacking the "judgment" in suit collaterally for fraud? and (3) If not, is defendant entitled to prove his defense of fraud by the examination of material witnesses as to relevant facts which the trial jury could find constitutes fraud? Otherwise, he would have been content with assenting to defendant's offer of proof 33 quoting its only material part.

(2) Plaintiff's reference to the disbarment decision was the third of such references in the course of this suit. The first was in his answer to defendant's Petitions to the Court of Appeals. It provoked a prompt and severe condemnation from defendant for its irrelevancy and total lack of justification. An explanation of the disbarment was also supplied in reply, and a copy of such explanation

is now in the Docket file before the pre-trial Justice for his examination if the fact of such disbarment is considered at all. That explanation did not state in so many words what is self-evident,—that the disciplinary proceeding was utilized to force payment of the alimony arrears regardless of their inequities and the fraud used to prevent modification or nullification, and once committed to that course, the appellate court, like a common bully possessed of power superior to that of his opponent uses his strength recklessly to destroy the weaker one, became hell-bent on compelling compliance with the divorce decree regardless of its increasing inequities and injustices and [fol. 144] the frauds perpetrated by plaintiff and her attorneys in committing perjury and subornation of perjury before the grand jury, the refusal of two Tammany judges to quash the phony indictment on some legal quibbling, her repetition of her perjury before the Domestic Relations Court in 1935 in order to secure defendant's arrest again when he was in the jurisdiction voluntarily to stand trial on the phony indictment, and went through with the disbarment on the fabricated charge of falsity in the testimony before Marks in violation of defendant's right to have that fact decided by a jury, and added that defendant had dishonored a commitment of his attorney that he would return to the jurisdiction when Justice Cotillo so directed whereas in fact Justice Cotillo never so directed and refused so to direct even when plaintiff started a mandamus proceeding to compel him so to direct. The decision of the Appellate Division was thus a deliberate falsification of fact in attempted justification of their thuggery.

When plaintiff's attorney repeated his irrelevant reference on a subsequent motion in this Court, defendant became more severe in condemnation, and warned against subsequent repetition. Plaintiff's attorney has now again offended, not only by another repetition, but even more, I should think, by the attempted justification he offers. On the oral argument on March 7, 1944, he stated in substance that

"When an attorney who is a litigant appears pro se, our judges here in the District are prone to favor him on the assumption that he is an experienced and trustworthy attorney. This defendant has had twice the years of experience in practicing law that I have had, but I wanted the

court to know of his disbarment so that he should not be so favored."

In behalf of the judges of this Court I reject and resent such an attempted justification. It would be difficult to conceive of one more slurring or more specious, with its inference and suggestion that the judges in this District, both in the District Court and in the Court of Appeals, are so improperly influenced, do show such favoritism under such influence, and that proof of a disbarment is necessary to prevent the play of such improper influence—leav- [fol. 145] ing entirely out of the equation the lawless character of this particular disbarment which exceeded in impropriety any that plaintiff's attorney's attempted justification imputes to the judges in this District. Such attempted justification attacking the integrity of judges is much worse even than the original offense attacking the integrity of defendant alone,—if the charge is not true. And the remarks of plaintiff's attorney indicating a danger of favoritism being shown this defendant certainly find no support in any decision or order made in this suit prior to the first reference to defendant's disbarment. We suspect that plaintiff's attorney has made a vacuous gesture and displayed exceedingly poor judgment.

(3) The oral statement by plaintiff's attorney on the pre-trial hearing of the private conversation alleged to him to have been had with the Chief Justice of this Court in the absence of defendant with reference to an erroneous ruling mentioned by defendant in a motion paper now before the pre-trial Justice concluded with the assertion that the Chief Justice had said not to "pay any attention to that remark of defendant; it was only the utterance of a disgruntled litigant."

It is inconceivable to defendant that an attorney qualified to practice at the bar of this Court does not perceive the impropriety of that occurrence and of his injection of it into the pre-trial hearing. Enough ethical obtuseness was displayed in the confession of plaintiff's attorney that he had sought such an interview in the absence of the opposing party. Defendant has always understood it to be highly unethical for one litigant or attorney to approach a judge participating in the litigation in the absence of the other side. Even more astounding and indiscreet is the statement

of plaintiff's attorney that the Chief Justice received him thus privately and discussed the case with him in the absence of defendant. And lastly, defendant would have assumed that no follower of the law who had passed beyond first term in law school would fail to realize the rank hearsay character of the Chief Justice's observation, and [fol. 146] thus its incompetence and inadmissibility in any American Court under the most elementary rules of the law of evidence. If this inept attorney had tendered the Chief Justice himself to repeat his remark directly, its immateriality would have precluded the testimony. But if notwithstanding, the law of evidence were suspended out of deference to the judicial position (an anomaly in itself), at least defendant would have had the right to question the witness as to the Rule and the reason for his disregarding it and possibly prove the error in the observation which plaintiff's attorney has lawlessly foisted upon the pretrial Justice without any such opportunity to defendant to exercise his right to cross-question.

All of which makes one wonder where we are headed under current day practices, and where we are likely ultimately to land by such practices. It may well be that defendant is living in a vanished past; but it is unquestionably the fact that in the heyday of his practice many of the maneuvers employed by plaintiff's attorney in this suit would have been stigmatized as shyster tactics and its perpetrator professionally ostracized. But such attitudes may have changed with the times. While protestations of professional probity increase in volume as probity itself disappears (even to the point that defendant is denied an opportunity to serve the Government in this time of emergency and manpower shortage), in practice lawyers and judges get away with much now that would not have been tolerated then. Pretensions are so much easier than practicing probity. And the consequent deterioration is appalling. It all proves Pope's famous observation that

> Vice is a monster of so frightful mien,
> as, to be hated, needs but to be seen;
> Yet seen too oft, familiar with her face,
> We first endure, then pity, then embrace.

At the present rate of retrogression it should not be long before the reputable lawyers will be driven entirely out of [fol. 147] the profession, by righteous disgust or by ruth-

less disbarment (or by both as was defendant's experience) and the practice of law taken over entirely by the Lepke type of "go-getters" and seekers for success without regard for the unscrupulous means of securing it. And future Lepkes may be exalted and idolized instead of being electrocuted and exorcised.

This Court should not be unmindful of the fact that this suit is not limited to its two litigants: the Court itself is a party to the proceeding, and equally on trial for the type of justice it dispenses. It is not a time blindly to follow false gods or to fawn upon its priests wearing judicial robes in New York City. The Temple of Justice there is in a shambles, its pillars pulled down by the contemporaneous sons of Samson, effectively aided by the sons of Erin. By the simple process of wishful thinking, a display of deference by the Court here to the judges there may appear to be only a trifling concession, expedient in the circumstances, and with no serious consequences—while it would actually be undermining the structure of justice in this jurisdiction. As for serious consequences, one need only reflect that a slight breach in the Mississippi levee or in a Holland dyke allowed to go unchecked can quickly lead to a devastating inundation. A small minority of Quislings in Norway, Holland and France brought a speedy subjugation of those countries by the hordes of Huns. Any whittling at the foundations of justice, any sacrifice of principle to expediency, no matter how plausible the specious reason for it may appear to be, has serious consequences. The temptation to kowtow should be uncompromisingly resisted and dispositions made solely on the merits and the law.

William H. Griffin, Defendant pro se, 4881 Connecticut Ave. N. W., Washington 8, D. C.

[fol. 148] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER OVERRULING DEFENDANT'S MOTION TO VACATE ORDER STRIKING PARTS OF DEFENDANT'S ANSWER AND TO REINSTATE SUCH STRICKEN PARTS—Filed March 23, 1944

Upon consideration of the Motion of the defendant pro se, William H. Griffin, to vacate an Order of the Court striking parts of defendant's answer, and to reinstate such stricken parts, filed February 21, 1944, by the defendant, and opposition of plaintiff filed thereto February 25, 1944, and defendant's reply to plaintiff's opposition, it is, by the Court, this 23rd day of March, 1944,

Ordered, that the defendant's motion be, and the same is hereby overruled; and further, that plaintiff's motion in opposition to defendant's motion to vacate Order striking parts of defendant's answer, and to reinstate such stricken parts, is hereby sustained.

F. Dickinson Letts, Justice.

Copy of the above Order was mailed to the defendant (pro se) this 17th day of March, 1944, addressed to William H. Griffin, Apt. 212, 4801 Connecticut Ave., N. W., Washington 8, D. C., in an envelope with proper postage affixed thereto, and bearing my return address in the upper left hand corner.

A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building, Washington 5, D. C.

[fol. 149] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER OVERRULING DEFENDANT'S MOTION TO AMEND ANSWER—Filed March 23, 1944

Upon consideration of the motion of the defendant pro se, William H. Griffin, to amend answer, filed March 7, 1944, it is by the Court, this 23rd day of March, 1944,

Ordered, that the defendant's motion be, and the same is hereby overruled.

F. Dickinson Letts, Justice.

Copy of the above Order was mailed to the defendant (pro se) this 17th day of March, 1944, addressed to William H. Griffin, Apt. 212, 4801 Connecticut Ave., N. W., Washington 8, D. C., in an envelope with proper postage affixed thereto, and bearing my return address in the upper left hand corner.

A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building, Washington 5, D. C.

[fol. 150] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER DENYING DEFENDANT'S MOTION TO TAKE THE DEPOSITION OF THE PLAINTIFF, AND TO STRIKE INTERROGATORIES—Filed March 23, 1944

Upon consideration of the motion of the defendant pro se, William H. Griffin, for leave to take the deposition of the plaintiff herein, on written interrogatories and plaintiff's motion in opposition filed thereto, it is, by the Court, this 23rd day of March, 1944,

Ordered, that the defendant's motion be, and the same is hereby denied, and that the defendant's list of interrogatories addresed to the plaintiff be stricken.

F. Dickinson Letts, Justice.

Copy of the above Order was mailed to the defendant (pro se) this 17th day of March, 1944, addressed to William H. Griffin, Apt. 212, 4801 Connecticut Ave., N. W., Washington 8, D. C., in an envelope with proper postage affixed thereto, and bearing my return address in the upper left hand corner.

A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building, Washington 5, D. C.

[fol. 151] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER SUSTAINING PLAINTIFF'S MOTION TO STRIKE AGREED FACTS AND OFFERS OF PROOF PRESENTED BY DEFENDANT—Filed March 23, 1944.

Upon consideration of defendant's Agreed Facts and Offers of Proof as presented by the Defendant pro se, and plaintiff's motion in opposition filed thereto February 28, 1944, it is by the Court, this 23rd day of March, 1944,

Ordered, that plaintiff's motion to strike Agreed Facts and Offers of Proof presented by Defendant be, and the same is hereby sustained.

F. Dickinson Letts, Justice.

Copy of the above Order was mailed to the defendant (pro se) this 17th day of March, 1944, addressed to William H. Griffin, Apt. 212, 4801 Connecticut Ave., N. W., Washington 8, D. C., in an envelope with proper postage affixed thereto, and bearing my return address in the upper left hand corner.

A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building, Washington 5, D. C.

[fol. 152] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER OVERRULING DEFENDANT'S MOTION TO (a) RE-ARGUE, AND (b) TO STRIKE IRRELEVANT MATTER IN THE FILE, OFFERED BY PLAINTIFF—Filed March 23, 1944.

Upon consideration of the motion of the defendant pro se, William H. Griffin, (a) to re-argue, and (b) to strike irrelevant matter in the file offered by plaintiff at the pretrial hearing of the above entitled matter, which motion was

filed by the defendant pro se March 13, 1944, it is by the Court, this 23rd day of March, 1944,

Ordered, that the defendant's motion (a) to re-argue, and (b) to strike irrelevant matter in the file offered by plaintiff, be, and the same is hereby overruled.

F. Dickinson Letts, Justice.

Copy of the above Order was mailed to the defendant (pro se) this 17th day of March, 1944, addressed to William H. Griffin, Apt. 212, 4801 Connecticut Ave., N. W., Washington 8, D. C., in an envelope with proper postage affixed thereto, and bearing my return address in the upper left hand corner.

A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building, Washington 5, D. C.

[fol. 153] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER STRIKING DEFENDANT'S REPLY TO "NEW" EVIDENCE OFFERED BY PLAINTIFF—Filed March 23, 1944

Upon consideration of the defendant's reply to "new" evidence offered by plaintiff at the pretrial hearing of this cause, which motion was filed by the defendant March 13, 1944, it is by the Court, this 23rd day of March, 1944,

Ordered, that the defendant's reply to "new" evidence offered by plaintiff, be, and the same is hereby stricken.

F. Dickinson Letts, Justice.

Copy of the above Order was mailed to the defendant (pro se) this 17th day of March, 1944, addressed to William H. Griffin, Apt. 212, 4801 Connecticut Ave., N. W., Washington 8, D. C., in an envelope with proper postage affixed thereto, and bearing my return address in the upper left hand corner.

A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building, Washington 5, D. C.

[fol. 154] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ORDER FOR SUMMARY JUDGMENT—Filed March 24, 1944

The above entitled cause having come on for hearing on the plaintiff's motion for Summary Judgment, filed February 15, 1944, against the defendant pro se, William H. Griffin, and said motion having been submitted to the Court without argument, and upon defendant's opposition filed thereto, it is, by the Court, this 24th day of March, 1944,

Ordered, (1), that plaintiff's Motion for Summary Judgment against the defendant William H. Griffin, be, and the same is hereby sustained; and

(2) That plaintiff be, and she is hereby granted Judgment against the defendant in the sum of $25,382.75, with interest thereon from February 23, 1938, and costs.

F. Dickinson Letts, Justice.

Copy of the above Order was mailed to the defendant (pro se) this 20th day of March, 1944, addressed to William H. Griffin, Apt. 212, 4801 Connecticut Ave., N. W., Washington 8, D. C., in an envelope with proper postage affixed thereto, and bearing my return address in the upper left hand corner.

A. M. Goldstein, Attorney for Plaintiff, 325-326 Bond Building, Washington 5, D. C.

[fol. 155] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

NOTICE OF APPEAL—Filed June 10, 1944

Notice is hereby given this 10th day of June 1944, that defendant herein hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 24th day of March, 1944, in

favor of plaintiff against this defendant, and from each and every part of said judgment.

And defendant will also ask to have reviewed on said general appeal the interlocutory orders herein of Justice F. Dickinson Letts made the 23rd day of March, 1944,

(1) Overruling defendant's motion to vacate order of Chief Justice Eicher of June 29, 1943, striking parts of defendant's answer and to reinstate such stricken parts, and sustaining plaintiff's motion in opposition to said motion of defendant;

(2) Overruling defendant's motion at pretrial hearing to amend answer;

(3) Denying defendant's motion for leave to take the deposition of plaintiff herein on written interrogatories, and striking the list of interrogatories addressed to plaintiff;

(4) Sustaining plaintiff's motion to strike Agreed Facts and Offers of Proof presented by defendant for the pretrial hearing;

and also, in the event the appeal record herein includes the Report of Jacob Marks, Official Referee, New York Supreme Court, offered by plaintiff at the pretrial hearing, but not otherwise, the additional interlocutory orders of said Justice Letts made said March 23, 1944,

(5) Overruling defendant's motion (a) to reargue and (b) to strike irrelevant matter in the file offered by plaintiff; and

(6) Striking defendant's reply to "new" evidence offered by plaintiff at the pretrial hearing.

William H. Griffin, Defendant pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

Mail notice to A. M. Goldstein, Attorney for plaintiff, 325-326 Bond Building, Washington 5, D. C.

[fol. 156] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

STATEMENT OF POINTS ON APPEAL—Filed June 10, 1944

I. The facts alleged and sought to be proved by defendant constitute fraud in fact and in law.

II. Such fraud is a valid basis of collateral attack in the Courts of the District of Columbia upon the "judgment" of the New York Court procured by such fraud and sued on by plaintiff herein.

III. The Full Faith and Credit Clause of the U. S. Constitution is not a bar to such attack and to the validity of such defense of fraud.

IV. The pretrial Justice erred in overruling defendant's motion to vacate order of Chief Justice Eicher striking parts of defendant's Answer and to reinstate such stricken parts, and sustaining plaintiff's motion in opposition to said motion of defendant.

V. The pretrial Justice erred in overruling defendant's motion to amend Answer.

VI. The pretrial Justice erred in denying defendant's motion for leave to take the deposition of plaintiff, and striking the written Interrogatories addressed to plaintiff.

VII. The pretrial Justice erred in sustaining plaintiff's motion to strike, and striking, the Agreed Facts and Offers of Proof presented by defendant for the pretrial hearing.

VIII. The pretrial Justice erred in sustaining plaintiff's motion for summary judgment against defendant and granting plaintiff judgment against defendant; and the judgment thereupon entered is contrary to law and equity [fol. 157] and good conscience, and is wholly null and void. And also, *in the event* the appeal record herein includes any part of the Report of Official Referee Jacob Marks dated January 7, 1936, offered by plaintiff on the pretrial hearing and filed herein on March 7, 1944, other than the passages quoted from said Report in paragraph numbered

33 at page 15 of the Agreed Facts and Offers of Proof presented by defendant, *but not otherwise,*

IX. The pretrial Justice erred (1) in overruling defendant's motion (a) to reargue the Justice's oral denial of right to defendant to reply to the irrelevant matter contained in Report of Jacob Marks, Official Referee, dated January 7, 1936, presented as "new" evidence by plaintiff at the pretrial hearing, and (b) to strike said irrelevant matter, and (2) in striking defendant's Reply to such irrelevant matter, all in violation of the Due Process Clause of the U. S. Constitution and of law and justice.

William H. Griffin, Defendant pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of June, 1944, I mailed a copy of the foregoing Statement of Points on Appeal to A. M. Goldstein, attorney for plaintiff, at 325-326 Bond Building, Washington 5, D. C., in an envelope bearing my return address in the upper left-hand corner, with proper postage affixed thereto.

William H. Griffin, Defendant pro se.

[fol. 158] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

STATEMENT UNDER U. S. CODE, TITLE 28, SECTION 832, AND D. C. CODE, TITLE 10, SEC. 8—Filed March 27, 1944

Now comes the defendant herein and states that

He is a citizen of the United States.

He seeks permission of this Court to file and prosecute his appeal herein from a summary judgment herein against him in favor of plaintiff and from various orders herein adverse to him without being required to prepay fees or costs or give security therefor.

Because of his poverty he is unable to pay the costs of said appeals or to give security for the same.

He believes that he is entitled to the redress he seeks on such appeal, namely, the preservation of his right under the Constitution of the United States to defend himself in this jurisdiction against a so-called judgment of the New York Supreme Court, New York City, on the grounds (1) that plaintiff applied for and secured said "judgment" without notice to defendant or opportunity to him to be heard in opposition to said application, in violation of the Due Process Clause, and (2) that said "judgment" was procured by the fraud of plaintiff upon defendant and the New York Court and defendant is not barred by the Full Faith and Credit Clause from attacking said "judgment" in this Court for such fraud, and (3) that defendant has the right to prove such fraud in this suit on said foreign "judgment," all of which has been denied defendant in this Court, despite plaintiff's admission in express language of lack of notice and by moving for summary judgment similarly in legal effect admits defendant's allegations of fraud.
[fol. 159] He is filing his appeals in good faith and is entitled to the relief sought.

William H. Griffin.

Subscribed and sworn to before me this 27th day of March, 1944, Charles E. Stewart, Clerk. By C. B. Coffin, Deputy Clerk.

Let the appeal by defendant herein be filed without prepayment of costs or giving security for the same.

F. Dickinson Letts, Justice.

[fol. 160] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed June 10, 1944

The Clerk will prepare the record in the above entitled cause and include therein the following:

1. Complaint and Exhibits attached;
2. Answer as originally filed, with markings of parts stricken;

3. Order of Chief Justice Eicher filed June 29, 1943, striking designated parts of Answer as originally filed;

4. Order of Justice Letts of March 23, 1944, overruling defendant's motion to vacate order of Chief Justice Eicher of June 29, 1943, etc.;

5. Order of Justice Letts of March 23, 1944, overruling defendant's motion to amend Answer;

6. Written Interrogatories of defendant addressed to plaintiff, filed February 10, 1944;

7. Order of Justice Letts of March 23, 1944, denying defendant's motion for leave to take the deposition of plaintiff, etc.;

8. Agreed Facts and Offers of Proof presented by defendant and filed herein on February 23, 1944;

9. Order of Justice Letts of March 23, 1944, striking said Agreed Facts and Offers of Proof;

13. Plaintiff's "Motion for summary judgment" (4 pages) and attached affidavit of Louis Stark (5 pages), filed February 15, 1944;

14. Order and Judgment of March 24, 1944, against defendant in favor of plaintiff;

15. Notice of Appeal.

16. Statement of Points on Appeal;

17. This Designation of Record;

18. Statement under U. S. Code, Title 28, Section 832, and order of Justice Letts thereon, filed March 27/28, 1944; [fol. 161] and also, *in the event* plaintiff designates for inclusion in the appeal record any part of the Report of Official Referee Jacob Marks dated January 7, 1936, offered by plaintiff on the pretrial hearing and filed herein on March 7, 1944, other than the passages quoted from said report in paragraph numbered 33 at page 15 of the Agreed Facts and Offers of Proof (item 8 hereinabove), but *not otherwise*,

10. Order of Justice Letts of March 23, 1944, overruling defendant's motion (a) to reargue and (b) to strike irrelevant matter;

11. Defendant's Reply filed herein March 13, 1944, to irrelevant matter presented as "new" evidence by plaintiff at the pretrial hearing; and

12. Order of Justice Letts of March 23, 1944, striking defendant's Reply to such "new" evidence.

William H. Griffin, Defendant pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of June, 1944, I mailed a copy of the foregoing Designation of Record to A. M. Goldstein, attorney for plaintiff, at 325-326 Bond Building, Washington 5, D. C., in an envelope bearing my return address in the upper left-hand corner, and with proper postage affixed thereto.

William H. Griffin, Defendant pro se.

[fol. 162] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ADDITIONAL DESIGNATION OF RECORD BY APPELLEE—Filed June 12, 1944

In addition to the items heretofore designated by the Appellant pro se in the above entitled matter, the Clerk of the Court will please include the following:

1. Orders of the Supreme Court of the State of New York, for the County of New York, both of which Orders were filed March 7, 1944;

2. Referee's Report of the Supreme Court of the State of New York for the County of New York, filed March 7, 1944;

3. Plaintiffs exhibits annexed to "Motion for Summary Judgment," filed February 15, 1944.

4. Docket entries.

A. M. Goldstein, Attorney for Plaintiff (Appellee), 325-326 Bond Building, Washington 5, D. C.

CERTIFICATE OF MAILING

I hereby certify that on the 12th day of June, 1944, I mailed a copy of the foregoing Additional Designation of Record by Appellee (plaintiff), to William H. Griffin, defendant pro se, addressed to him at 4801 Connecticut Ave.,

N. W., Apartment 212, Washington 8, D. C., in an envelope with proper postage affixed thereto, and bearing my return address in the upper left-hand corner.

A. M. Goldstein, Attorney for Plaintiff (Appellee), 325-326 Bond Building, Washington 5, D. C.

[fols. 163-166] [File endorsement omitted]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

[Title omitted]

ADDITIONAL STATEMENT OF POINTS ON APPEAL—Filed June 14, 1944

X. The so-called judgment in suit, of the New York Supreme Court, was procured by plaintiff without notice to defendant and without affording him opportunity to be heard in opposition, and is therefore inimical to, and null and void under, the Due Process Clause of the U. S. Constitution.

William H. Griffin, Defendant pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

ADDITIONAL DESIGNATION OF RECORD BY DEFENDANT

In addition to the items 1-18 heretofore designated herein by defendant, the Clerk will please include the following in the appeal record herein:

16a. The above Additional Statement of Points on Appeal, and

17a. This Additional Designation of Record by Defendant.

William H. Griffin, Defendant pro se, 4801 Connecticut Ave., N. W., Washington 8, D. C.

CERTIFICATE OF MAILING

I hereby certify that on the 13th day of June, 1944, I mailed a copy of the foregoing to A. M. Goldstein, attorney for plaintiff, at 325-326 Bond Building, Washington 5, D. C., in an envelope bearing my return address in the upper left-hand corner, and with proper postage affixed thereto.

William H. Griffin, Defendant pro se.

[fol. 167] DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 168] IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1945

Before Honorable Justin Miller, Henry W. Edgerton and Thurman Arnold, Associate Justices.

No. 8812

WILLIAM H. GRIFFIN, Appellant,

vs.

GRACE H. GRIFFIN, Appellee

MINUTE ENTRY—February 15, 1945

Argument commenced by Mr. William H. Griffin, appellant pro se and concluded by Mr. A. M. Goldstein, attorney for appellee.

[fol. 169] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

No. 8812

WILLIAM H. GRIFFIN, Appellant,

v.

GRACE H. GRIFFIN, Appellee

Appeal from the District Court of the United States for the District of Columbia

Argued February 15, 1945. Decided February 26, 1945

Mr. William H. Griffin, appellant, pro se.
Mr. A. M. Goldstein for appellee.

Before Miller, Edgerton and Arnold, Associate Justices

OPINION—Filed February 26, 1945

Per Curiam:

A careful examination of the record discloses no reversible error, and the judgment is, therefore, Affirmed.

[fol. 170] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, JANUARY TERM, 1945

No. 8812

WILLIAM H. GRIFFIN, Appellant,

v.

GRACE H. GRIFFIN, Appellee

Appeal from the District Court of the United States for the District of Columbia

JUDGMENT—Filed February 26, 1945

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Columbia, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed with costs.

Per curiam.

Dated February 26, 1945.

[fol. 171] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

[Title omitted]

DESIGNATION OF RECORD—Filed April 9, 1945

The Clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Transcript of Record certified by the Clerk of the United States District Court for the District of Columbia, and filed in your office on or about July 15, 1944.

3. Minute entry of argument.

4. Opinion of your Court.

5. Judgment of your Court.
6. This Designation.
7. Clerk's certificate.

William H. Griffin, Appellant pro se, 4801 Connecticut Ave. N. W., Washington 8, D. C.

[fol. 172] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 173] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 86

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS—October 8, 1945

On Consideration of the motion for leave to proceed *in forma pauperis* herein,

It Is Ordered by this Court that the said motion be, and the same is hereby, granted.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this motion.

[fol. 174] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. 86

ORDER ALLOWING CERTIORARI—Filed October 8, 1945

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this application.

[fol. 174a] [Endorsed on Cover:] In forma pauperis. Entered William H. Griffin, pro se. File No. 49760. U. S. Court of Appeals for The District of Columbia. Term No. 86. William H. Griffin, Petitioner, vs. Grace H. Griffin. Petition for writ of certiorari and exhibit thereto. Filed May 23, 1945. Term No. 86, O. T. 1945.

(782)

SUPREME COURT OF THE UNITED STATES.

No. 86.—October Term, 1945.

William H. Griffin, Petitioner, vs. Grace H. Griffin. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[February 25, 1946.]

Mr. Chief Justice Stone delivered the opinion of the Court.

This is a suit brought in the District Court of the District of Columbia, in which respondent sought to recover the amount of a judgment which she had secured against petitioner in 1938 in the Supreme Court of New York for arrears of alimony. The question for decision is the extent to which due process permits the New York adjudication to be made the basis for recovery in another jurisdiction.

The record abounds in confusing and irrelevant matter, but the following facts may be gleaned from the papers in the New York court proceedings which it contains. On June 24, 1924, the Supreme Court of the State of New York entered its interlocutory judgment divorcing respondent from petitioner, which judgment was, in 1926, modified to provide that petitioner should pay to respondent alimony in the sum of $3,000 annually in equal monthly installments. Both parties were then residents of New York, and the divorce action was contested. Petitioner left New York in 1929, and though he has returned to the jurisdiction intermittently since that time, the record does not show whether he ever again took up residence there. Petitioner was a resident of the District of Columbia at the time this suit was begun.

In 1935 respondent moved in the original divorce proceeding to punish petitioner for contempt for his failure to pay installments of alimony as directed by the decree of divorce, and petitioner, in conformity to New York procedure, made a cross-motion to modify the original judgment by reducing past due and future installments of alimony. Thereupon the New York court entered an order referring to a referee for determination two of the issues of fact raised by the motions, (a) the amount of unpaid install-

ments of alimony due from petitioner to respondent, and (b) petitioner's then ability to pay them. These questions were litigated by the parties in contested hearings before the referee, whose report of January 7, 1936, found the amount then due from petitioner to respondent as arrears of alimony, and that petitioner had failed to present any credible testimony showing his inability to pay. The New York Supreme Court then entered its order of February 25, 1936, declaring that there was due from petitioner to respondent for the period ending October 25, 1935 alimony arrears and accrued interest in the sum of $18,493.64. Petitioner's appeal from this order to the Apellate Division of the New York Supreme Court was dismissed for want of prosecution.

Some time later, respondent made a further motion in the Supreme Court for an order directing the county clerk to enter as a money judgment the arrears of alimony due and unpaid under the judgment of divorce. This motion was granted, and an order was entered February 19, 1938 directing the clerk to docket a judgment in favor of respondent against petitioner in the sum of $25,382.75. As indicated in the order this amount was made up of the following items:

Installments of alimony accrued to October 25, 1935, found due by the order of the Supreme Court of February 25, 1936	$18,493.64
Interest on this amount to date of entry of the 1938 order	2,589.11
Installments of alimony due from October 25, 1935, to the date of the 1938 order	3,750.00
Interest on these installments	550.00
	$25,382.75

A judgment that respondent recover this amount from petitioner and have execution upon it was entered by the clerk on February 23, 1938. Both the order of February 19, 1938 and the judgment upon it were entered ex parte, without notice to petitioner, as then seems to have been permitted under § 538 of the New York Civil Practice Act. *Thayer* v. *Thayer*, 145 App. Div. 268 (1st Dep't).[1] Petitioner, by his answer in the present suit on this

[1] Since the entry of the 1938 judgment, Sec. 1171-b of the New York Civil Practice Act has been added by Laws of 1939, Ch. 431, amended, Laws of 1940, Ch. 226, so as to provide:

"§ 1171b. Enforcement by execution of judgment or order in action for divorce, separation or annulment. Where the husband, in an action for

judgment set up as defenses that the judgment of February 1938 was entered without notice to him, and was for that reason null and void for want of due process, and also "because of gross fraud in its incidence and procurement, and in its making and entry, and in its monetary contents, and in the amount claimed to be due and owing under it," and so was not entitled to any recognition in the District of Columbia.

On motion for summary judgment, supported by pleadings, affidavit and admissions establishing the several judgments, orders and records of the New York Supreme Court to which we have referred, the district court ordered summary judgment in the sum of $25,382.75, with interest from February 23, 1938. The Court of Appeals for the District affirmed without opinion. We granted certiorari, — U. S. —, on a petition which urges the sufficiency of the defenses raised below.

By Rule 56(d) of the Rules of Civil Procedure, the court, on a motion for summary judgment, is required to ascertain by examination of the pleadings and the evidence before it what material facts exist without substantial controversy and what material facts are actually and in good faith controverted, and thereupon to make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just. For the purposes of the trial it is provided that the facts so specified shall be deemed established and the trial conducted accordingly. In the present state of the record, and in order that the summary judgment procedure may be properly followed, it becomes necessary to determine what facts appear without substantial controversy, and in the light of those facts to direct such further proceedings in the action as are just.

Of controlling significance in this case are the following uncontroverted facts of record: the judgment or decree rendered by the New York Supreme Court in 1926 directing annual payments of

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divorce, separation, annulment, or declaration of nullity of a void marriage, makes default in paying any sum of money as required by the judgment or order directing the payment thereof, the court may make an order directing the entry of judgment for the amount of such arrears, together with ten dollars costs and disbursements. *The application for such order shall be upon such notice to the husband as the court may direct.* Such judgment may be enforced by execution or in any other manner provided by law for the collection of money judgments. The relief herein provided for is in addition to any and every other remedy to which the wife may be entitled under the law." (Italics supplied.)

alimony in the sum of $3,000; the order of the New York Supreme Court in the same proceeding determining as a result of an active litigation between the parties that as of February 25, 1936, there was due and payable from petitioner to respondent arrears of alimony in the sum of $18,493.64, representing installments accrued to October 25, 1935, with interest to that date, and that petitioner was not entitled to any reduction in the amount due; and finally, the judgment of the New York Supreme Court of 1938, which incorporated in the amount adjudged to be due the arrears of alimony with interest found by the 1936 order to have accrued to October 25, 1935.

We have examined the New York law, and conclude that the 1926 New York alimony decree was, under the New York practice, subject to some power of modification nunc pro tunc as to alimony accrued but unpaid up to the time of modification. See New York Civil Practice Act, Sec. 1170; Laws 1925, Ch. 240.[2] Under the local practice, alimony which has accrued under a decree of divorce may not be collected by execution unless and until a judgment for the amount of alimony accrued but unpaid is docketed by order of the court which issued the decree. *Thayer* v. *Thayer*, *supra*; *Ostrin* v. *Posner*, 127 Misc. 313. And upon a motion to docket as a judgment, arrears of alimony awarded under a prior decree, the husband may defend on the grounds that the alimony or some part of it is not due because of the death or remarriage of the wife, *Kirkbridge* v. *Van Note*, 275 N. Y. 244; or that the obligation has been discharged by payment or otherwise, *Karlin* v. *Karlin*, 280 N. Y. 32; or that circumstances have so changed

[2] The New York law described in *Sistare v. Sistare*, 218 U. S. 1, decided in 1910, differs significantly from the more recent New York law which governs this case, as will be seen from the authorities cited. Ch. 240 of the Laws of 1925 amended Section 1170 of the Civil Practice Act so as to provide in part: "Where an action for divorce or separation is brought by either husband or wife, the court, except as otherwise expressly prescribed by statute, must give, either in the final judgment, or by one or more orders, made from time to time before final judgment, such directions as justice requires, between the parties, . . . where the action is brought by the wife, for the support of the plaintiff. The court, by order, upon the application of either party to the action, . . . after due notice to the other, to be given in such manner as the court shall prescribe, at any time after final judgment, may annul, vary or modify such directions, or in case no such direction or directions shall have been made, amend it by inserting such direction or directions as justice requires . . . for the support of the plaintiff in such final judgment or order or orders. . . ."

as to justify a reduction of alimony already accrued by modification of the alimony decree, *Van Dusen* v. *Van Dusen*, 258 App. Div. 1020 (3d Dept.); *Cunningham* v. *Cunningham*, 261 App. Div. 973 (2d Dept.); *Eisinger* v. *Eisinger*, 261 App. Div. 1031 (3d Dept.).

Concededly the 1938 judgment was entered without actual notice to or appearance by petitioner, and without any form of service of process calculated to give him notice of the proceedings. Compare *International Shoe Co.* v. *Washington*, No. 107 of this term, slip opinion, p. 8. Because of the omission, and to the extent that petitioner was thus deprived of an opportunity to raise defenses otherwise open to him under the law of New York against the docketing of judgment for accrued alimony, there was a want of judicial due process, and hence want of that jurisdiction over the person of petitioner prerequisite to the rendition of a judgment *in personam* against him. *McDonald* v. *Mabee*, 243 U. S. 90; cf. *Webster* v. *Reid*, 11 How. 437, 459. The only indication in the record as to petitioner's residence at the time of the entry of the 1938 judgment is a recitation in the judgment itself that he was then a resident of the District of Columbia. But it is immaterial for present purposes whether or not petitioner was a domiciled resident of New York at the time, either within or temporarily without the state, or a resident of some other jurisdiction. It is plain in any case that a judgment *in personam* directing execution to issue against petitioner, and thus purporting to cut off all available defenses, could not be rendered on any theory of the state's power over him, without some form of notice by personal or substituted service. *Wuchter* v. *Pizzutti*, 276 U. S. 13, 18-20; Restatement of Conflict of Laws, § 75; and compare *Milliken* v. *Myer*, 311 U. S. 457. Such notice cannot be dispensed with even in the case of judgments *in rem* with respect to property within the jurisdiction of the court rendering the judgment. *Roller* v. *Holly*, 176 U. S. 398, 409.

A judgment obtained in violation of procedural due process is not entitled to full faith and credit when sued upon in another jurisdiction. *National Exchange Bank* v. *Wiley*, 195 U. S. 257; *Old Wayne Life Ass'n* v. *McDonough*, 204 U. S. 8, 23; *Baker* v. *Baker, Eccles & Co.*, 242 U. S. 394, 401. Moreover, due process requires that no other jurisdiction shall give effect, even as a matter of comity, to a judgment elsewhere acquired without due process. Restatement of Judgments, § 11, Comment (c).

While it is undoubtedly true that the 1926 decree, taken with the New York practice on the subject, gave petitioner notice at the time of its entry that further proceedings might be taken to docket in judgment form the obligation to pay installments accruing under the decree, we find in this no ground for saying that due process does not require further notice of the time and place of such further proceedings, inasmuch as they undertook substantially to affect his rights in ways in which the 1926 decree did not.[3] By § 1170 of the New York Civil Practice Act, petitioner was afforded the opportunity to move to modify the alimony decree *nunc pro tunc*. The right afforded by that section is a substantial one, and may, under the law of New York, be exercised by him, in effect by way of defense, in addition to the defense of payment, in a proceeding begun by his wife to docket a judgment for accrued alimony. See *Van Dusen* v. *Van Dusen*, *supra*; *Cunningham* v. *Cunningham*, *supra*; *Eisinger* v. *Eisinger*, *supra*. As we read the 1938 judgment, which recited that the alimony was "due and unpaid," and directed the issuance of execution for its collection, it purported to cut off any defense of payment or claim under Section 1170, which petitioner might have been prompted to assert, and which he had the right to assert in the very proceeding which culminated in the judgment sued upon.[4] That right could not be rendered nugatory by failure to give him notice of that proceeding.

It is said that we must presume that the New York practice requires that a judgment for accrued alimony which has been

[3] We do not share in the apprehension that the cost of providing such notice as will satisfy due process requirements each time a proceeding is begun to docket a judgment for an accrued installment of alimony will be incommensurately high. In various statutes New York has been able to provide for notice by mail, which is reasonably adapted to provide actual notice and inexpensive in its operation. New York Civil Practice Act, § 229-b; New York Real Property Law, § 442-g; New York Vehicle and Traffic Law, §§ 552, 552-a; see also Durlacher *v.* Durlacher, 173 Misc. 329.

[4] A judgment procured by fraud may be vacated on that ground in the state of its rendition, and the fraud may perhaps be urged as a defense against its enforcement elsewhere. But a demonstration that the alimony has been paid would not necessarily establish that a judgment for arrears had been fraudulently procured by the wife's false representations to the court that they had not been paid. There are many instances in which a finding of payment will have turned on substantial questions of fact or law upon which a defendant was entitled to be heard, but as to which it could not be said that his antagonist had practiced fraud on the court. Moreover, some available defenses other than payment, as for example, change of the husband's circumstances, are of such nature as to afford no basis for attacking the judgment as fraudulent.

docketed without notice, must, quite apart from due process requirements, be set aside on the defendant's application showing to the court that he had a defense to the claim for accrued alimony.[3] From this it is said to follow that the 1938 judgment did not deprive petitioner of any right which he previously had, or of any defense which he might have been entitled to make, and that therefore the judgment is not wanting in due process. The argument then runs that since such a judgment satisfies due process it is entitled to as much faith and credit in other jurisdictions as it has in New York. This, it is suggested, means that the judgment may be made the basis of suit in another jurisdiction, but subject there to all those defenses which would be grounds for setting it aside in New York.

But if want of notice were, without more, a sufficient ground for setting aside the judgment under the New York practice, this could hardly be held to amount to anything more than recognition by New York of the constitutional precept that a court may not act to give a personal judgment in the absence of notice. If New York, by its practice, recognizes the ineffectiveness of such a judgment, that could not be made a ground for giving the judgment effect elsewhere more than any other judgment rendered without notice. It might as well be said that any judgment which does not validly cut off defenses because rendered without due process may be made the basis of suit elsewhere subject to those defenses. To the extent that New York refuses, if it does refuse, to set aside the judgment of 1938 unless there be some affirmative showing that there was a meritorious substantive defense to its entry, there is an assertion of power in the court to enter a money judgment and issue execution upon it without notice. The assertion for the first time by the 1938 judgment of

[3] In Thayer v. Thayer, 145 App. Div. 268, 270, 271, it was said by way of dictum, "If the court is misled and an installment improperly docketed the defendant will find no difficulty in having the mistake corrected." But that case was decided before the adoption of § 1170 of the New York Civil Practice Act permitting the modification of any alimony decree *nunc pro tunc* by reducing the amount of accrued alimony. See note 2, *supra*. We cannot assume that the "mistake" contemplated by that opinion was one not relating to payment or discharge. Whether under New York practice a judgment for accrued alimony, docketed without notice, could be opened and the amount of accrued alimony reduced *nunc pro tunc*, remains a matter for speculation. In any case, Section 1170 itself does not appear to authorize a motion to set aside a judgment docketed for alimony accrued under an earlier decree directing payment of installments of alimony.

power to adjudicate petitioner's liability for accrued alimony and to direct its enforcement by execution, see *Thayer* v. *Thayer, supra,* does not differ in its nature and constitutional effect from the like assertion of power to issue execution by any other judgment rendered without notice.

Due process forbids any exercise of judicial power which, but for the constitutional infirmity, would substantially affect a defendant's rights. To the suggestion that under the presumed New York practice the power asserted by the judgment does not include the final adjudication of any of the defenses which petitioner might have had, and that notice is therefore not required, the answer must be that the judgment authorizes the immediate issuance of execution. We are unable to reconcile the direction that petitioner's property be seized on execution to satisfy an obligation for the first time found by the judgment to be "due and unpaid" with the theory that the obligation is, for constitutional purposes, thus only tentatively adjudicated. There can be no doubt that a levy upon any property petitioner might have in New York would substantially, and in at least some instances, permanently affect his rights. We cannot say that this could be done without notice of the proceeding said to justify the levy. Even though petitioner could, if he knew of the judgment before execution is actually levied, move to set the judgment aside, that could not save the judgment from its due process infirmity, since it and the New York practice purport to authorize the levy of execution before petitioner is notified of the proceeding or the judgment.

Since by virtue of the due process clause the judgment is ineffective in New York to adjudicate petitioner's rights for enforcement purposes, it cannot be made the instrument for enforcing elsewhere the obligation purportedly adjudicated by it. And even if we were to say that by virtue of the New York practice, and without reference to due process, the 1938 judgment is not an assertion of judicial power to bind petitioner's property for the obligation which the judgment purports to establish, such a judgment would obviously add nothing to the 1926 decree as a basis for enforcing the obligation in another jurisdiction. Neither the judgment nor the earlier decree would do more than establish the original obligation to pay alimony subject to defenses which the supposed New York practice would preserve if due process did not.

It follows that to the extent that the 1938 judgment purports to

adjudge as due and owing arrears of alimony accrued since October 25, 1935, the end of the period covered by the 1936 order, it is ineffective to establish petitioner's personal liability, or to deprive him of defenses to his asserted liability for those arrears.

But the 1938 judgment, so far as it confirmed the adjudication of the amount of alimony and interest due as of October 25, 1935, stands on a different footing. It has not been suggested, and we have not found any New York authority holding that any of the questions with respect to payment, or to the modification of the alimony decree nunc pro tunc which petitioner raised or might have raised in the 1936 proceedings were thereafter open to him as to the accrued installments which were the subject of his motion to modify the decree. The 1936 order became final upon the dismissal of petitioner's appeal from it, and was an adjudication between the parties that arrears of alimony were then due and owing by petitioner to respondent in the specified amount. As we said in *Barber* v. *Barber*, 323 U. S. 77, 82, paraphrasing *Sistare* v. *Sistare*, 218 U. S. 1, where a decree for alimony is made the basis of an action in another jurisdiction, "'every reasonable implication must be resorted to against the existence of' a power to modify or revoke installments of alimony already accrued "in the absence of clear language manifesting an intent to confer it.'"

Defenses which might otherwise have been open to petitioner in the 1938 proceeding with respect to alimony accrued to October 25, 1935 must thus be taken as having been foreclosed by the 1936 proceedings, of which petitioner had actual notice, and in which he actively participated. The 1938 judgment, so far as it confirmed the 1936 order by which petitioner was already bound, impaired no rights of petitioner, and foreclosed no defense which he had not had opportunity to offer. Due process does not require that notice be given before confirmation of rights theretofore established in a proceeding of which adequate notice was given.

Upon the facts shown, respondent was therefore entitled to maintain the present suit on the 1938 judgment for the amount, with interest, thus adjudicated to be due by the order of 1936, and as so adjudicated, confirmed by the judgment of 1938. For in *Sistare* v. *Sistare*, *supra*, we held that the full faith and credit clause of the Constitution required a Connecticut court to render judgment for past due installments of alimony which had accrued under a New York decree for future alimony, the right to which we held had become vested under the then existing New York law, even

though the decree might be subject to modification prospectively as to future installments by further orders of the New York court.

We have said that the failure to give petitioner notice of the 1938 proceeding did not prejudice him as to any of the defenses which he might have raised in the 1936 proceeding. But although it purported to do so, the 1938 judgment, because rendered without notice, could not foreclose defenses going to the discharge of the obligation established by the order of 1936, and arising since its date. It follows that upon further proceedings upon the remand of this cause to the district court, respondent will be taken as having established the amount of alimony accrued to October 25, 1935 remaining due and unpaid as of February 25, 1936, subject to any subsequent defense going to the discharge of the obligation so established, which petitioner should be permitted to raise, if any he has.

In the present state of the record, and because of the limited nature of the questions presented and argued here, we do not determine the extent to which respondent may, upon such further proceedings as are appropriate on the return of this case to the district court, recover, upon the 1926 decree, installments of alimony which have accrued since October 25, 1935. While the 1926 decree is in the record and must be the foundation of any right respondent has to recover arrears of alimony accruing since October 25, 1935, her pleadings make it sufficiently clear that the present suit was based upon the 1938 judgment rather than upon the decree. If respondent is entitled to base a suit for installments of alimony accruing after October 25, 1935 on the 1926 decree, she has misconceived her cause of action as to those installments by seeking to recover them by virtue of the 1938 judgment, which is invalid as to them because obtained without notice. But petitioner is not to be prejudiced by respondent's mistake, for since he was entitled to regard the suit as one upon the judgment, he was not required to interpose defenses which would be apt if the suit were upon the 1926 decree. The suit on the 1938 judgment, in its present form, is not to be viewed as if it were on the 1926 decree, a new and different cause of action, and petitioner is not to be penalized for not having already raised his defenses to a claim not presented by respondent's pleadings. In remanding we leave the district court free to consider whether respondent, upon issues appropriately framed in conformity to the summary

judgment procedure, or by amended pleadings, may recover on the basis of the 1926 decree, arrears of alimony accruing since October 25, 1935.[6]

Only a word need be said as to petitioner's defense that the judgment was procured by fraud. Although his answer pleads his legal conclusion that the judgment is not entitled to recognition because "of gross fraud in its incidence, and in its procurement", etc., etc., his answer sets up no facts showing the alleged fraud. A part of his answer and an unverified statement filed by petitioner in response to the motion for summary judgment were ordered stricken by the trial court, evidently because irrelevant and scandalous. In these the charge of fraud is elaborated by general statements that the machinations of the New York counsel of the parties, and their racial, religious and political affiliations with the judges who have presided over the various phases of the New York litigation, have resulted in the failure of justice exemplified by the several decisions adverse to petitioner. We have examined these assertions and find that the only support for them, so far as appears, is petitioner's unsupported suspicions. We thus find no basis for the allegation that the judgment was procured or in some way affected by fraud, or for the contention that the offensive matter was improperly stricken. We have examined, but find it unnecessary to discuss various other of petitioner's contentions, which are likewise without merit.

The judgment will be reversed and the case remanded for further proceedings in conformity to this opinion.

So ordered.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

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[6] See Barber *v.* Barber, 323 U. S. at 81; Jacobs, The Enforcement of Foreign Decrees for Alimony (1939), 6 Law & Contemporary Problems, 250, 263-4.

SUPREME COURT OF THE UNITED STATES.

No. 86.—October Term, 1945.

William H. Griffin, Petitioner, vs. Grace H. Griffin. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[February 25, 1946.]

Mr. Justice Rutledge, dissenting in part.

I concur in the opinion except as it holds or implies that the 1938 New York judgment is invalid and therefore is not entitled to full faith and credit in so far as it includes instalments of alimony accruing after October 25, 1935, and interest upon them.

The Court apparently regards the judgment as invalid to this extent because, under the New York procedure, it was docketed without notice to the petitioner additional to the notice he had received in the original proceeding for divorce which resulted in the 1924 decree modified in 1926 to provide for the monthly accrual and payment of these instalments.

The bases for this view seem to rest in two assumptions. One is that the 1938 judgment, except as to the arrears accumulated to October 25, 1935, is precisely the same as any other money judgment and therefore falls within the prohibition of *Pennoyer v. Neff*, 95 U. S. 714. In this view the absence of further notice is equivalent to the absence of any; and the judgment becomes invalid for want of due process for purposes of local enforcement as well as for receiving full faith and credit in other jurisdictions.[1] The second assumption is that the docketing of the judgment cut off petitioner's right to make any of the defenses, relat-

[1] " . . . the duly attested record of the judgment of a state is entitled to such faith and credit in every state within the United States as it has by law or usage in the state from which it came." Adam *v.* Saenger, 303 U. S. 59, 62; Hanley *v.* Donoghue, 116 U. S. 1, 5; Hampton *v.* M'Connel, 3 Wheat. 234; Mills *v.* Duryee, 7 Cranch. 481; 28 U. S. C. § 687.

In this case we are not concerned with the possible exception to the general rule implicit in the situation presented by Williams *v.* North Carolina, 325 U. S. 226, that a decree for divorce, although not entitled to full faith and credit in other states, still may be valid as a matter of due process in the state where rendered.

ing to matters arising after entry of the 1924 decree, which by the law of New York he was entitled to make (and which he did make in 1935 concerning arrears then accrued) at any time prior to docketing of the judgment. I am unable to accept either of these assumptions.

I.

If it were clear, as the Court seems to hold, that petitioner's right to make the allowable defenses was extinguished under the New York law by the docketing of the judgment, we would be confronted with the necessity of determining whether that fact would bring the case within the rule and the reason of *Pennoyer* v. *Neff*, *supra*, and later cases following that decision.[2] In that event, the question to be decided would be whether it is within the power of a state to provide that, after full notice and hearing in a judicial proceeding resulting in a decree for alimony to be paid in monthly instalments indefinitely, those instalments should or might be docketed in the form of judgments for specific amounts as they accrue without further notice to the defendant; but with the qualification that he should have the right to come in at any time before an instalment is docketed and show that the circumstances comprehended by the original decree have so changed as to entitle him to reduce or terminate the payments. The effect of such a provision would be simply to put upon the defendant, against whom the decree had been rendered, the burden of bringing to the court's attention and proving the changed situation.

It is difficult to see how such a provision could constitute a want of due process or of notice in the jurisdictional sense contemplated by the *Pennoyer* v. *Neff* line of decisions. Nor has this Court so held heretofore. By the very terms of the alimony decree it is adjudicated that the defendant is liable to pay the instalments as they accrue. And also by its terms, together with the applicable statutes, he is notified that the instalments will be, or may be, docketed as judgments enforceable by execution, unless he takes the initiative in showing to the court before the accrual date, or any later time when the plaintiff may move for entry of judgment, that new conditions have arisen requiring or justifying change or termination. Moreover, in addition to the notice

[2] See McDonald *v.* Mabee, 243 U. S. 90; Milliken *v.* Meyer, 311 U. S. 457. See also Restatement, Judgments, § 6, comment *b*; § 16, comment *b*; Burdick, Service as a Requirement of Due Process in Actions in Personam (1922) 20 Mich L. Rev. 422.

petitioner had received from the original decree and the applicable statutes, he received further notice from the 1936 order, entered after contest, by virtue of the court's finding that he then had no sufficient ground for securing a reduction, although he had contended that he was financially unable to meet these payments.

I cannot understand why such notice, clearly and unequivocally given in advance, is not sufficient both to inform the defendant fully of his peril and to afford full constitutional protection for his rights.[3] On the other hand, to compel the wife to give additional notice before docketing of each instalment is to shift to her the burden which the original decree places squarely on the husband. Moreover, in many cases where the amount of the monthly or weekly instalment is small, the effect will be practically to nullify the provision for payment of alimony, because the cost of publishing or otherwise giving notice will equal or exceed the amount of the instalment.[4] A more perfect tool hardly could be given to an absent or absconding husband for defeating the substance of the award.

Due process does not require that notice of suit be given more than once or, when this has been done and a valid judgment entered, that additional notice must be given before execution, original or *alias*.[5] Jurisdiction over the person having been obtained in the original proceeding on adequate notice, further steps in the proceedings are largely within the court's discretion, except in so far as they are controlled by statute, including proceedings

[3] Cf. notes 9 and 13.

[4] It is no answer to say that the wife may reduce the cost of publication or giving other form of notice by allowing the instalments to accrue over long periods of time and then moving for entry of judgment in the aggregate sum, as the wife was forced to do in this case. The very purpose of the provision for payment by instalments, rather than in a lump sum, is to assure that the wife shall have them as they accrue, as much as it is that the husband shall be allowed to earn them as time goes along. She may be dependent for support of herself and children more upon the promptness of the payments than upon their ultimate certainty. And any technical requirement for notice additional to that given by the original decree can only result in depriving the wife of her right to prompt payment, if the husband can take advantage of the requirement and the small amount of the instalments to compel her to let them accumulate. Because delay so often results in loss of substantial rights, the effect frequently will be also to make impossible the ultimate as well as the immediate collection of what is due; and to substitute a right of lifelong litigation for one of certain means of subsistence. The facts of this case afford abundant illustration of both possibilities.

[5] See Endicott-Johnson Corp. *v.* Encyclopedia Press, 266 U. S. 285; Taylor *v.* Stone, 218 Mass. 248.

after judgment and on execution. True, these later steps may not be taken arbitrarily.[6] But that limitation does not require the giving of notice at each successive stage as upon the original service of summons. Nor does it forbid the court or the legislature to place upon the defendant or other parties responsibility for keeping themselves informed concerning the progress of the cause. Judgment by default, without further notice than a statutory warning to take steps to ward it off, is an everyday occurrence. After judgment the burden of taking the initiative to avoid the adjudication's effect falls even more heavily upon the defendant. Unless he assumes and discharges it, he cannot hold up execution for want of special notice that authorized steps to reach his property are about to be taken. Generally speaking, the stage of execution is committed largely to the plaintiff's control; and that notice must be given to the defendant at that stage before his property within the court's jurisdiction can be taken to satisfy the judgment is foreign both to accepted conceptions of due process and to generally prevailing statutory schemes for securing satisfaction.

In accordance with these principles, if an ordinary money judgment were entered for a fixed sum, but with authorized provision for payment in instalments over a definite period, to be collected by levy upon failure to pay any instalment when due, I fail to see what conceivable constitutional objection could be raised against the judgment or any such levy by reason of failure to give notice of the intended levy. Nor do I see how such a scheme could be vitiated were the state additionally to require that the levy, instead of being made automatically or ministerially at the plaintiff's instance, should be made only after further order of the court, entered either of its own motion or on application of the plaintiff. Whether judgments shall be paid in a lump sum or by instalments and in either event whether execution shall issue and be levied by one form of procedure or another, with or without further notice, are matters wholly of policy within state power to determine, raising no question of constitutional import.

These principles are not altered fundamentally merely because, in proceedings for divorce, the decree provides that monthly instalments shall continue for the period of need, in accordance with the

[6] See Brown *v.* Brown, 62 R. I. 375; State *ex rel.* Lane *v.* Montgomery, 221 Mo. App. 1043.

duty to support imposed by marriage and the birth of children,[7] and take the place of a lump sum payment fixed in amount.[8] Nor do they become inapplicable because the state sees fit, as a matter of policy, to allow the defendant to show that the need, or the duty created by the decree, has ended; at the same time making it a condition of securing such relief that he shall take the initiative in showing the changed situation and shall do so before levy is made under instalments as they accrue. Certainly there is nothing unreasonable, harsh or arbitrary when a state, after full notice and hearing, determines that the basic familial obligation shall be enforced by judicial decree formulated to embody the obligation in close analogy, if not exact identity, with the obligation's substantive character, particularly when it affords the husband opportunity for showing a change affecting the substance of the obligation.

The fallacy of the Court's assumption, it seems to me, is that the opportunity is inadequate if it is limited to the period before the due date of the instalment arrives or such later date as the wife may select to ask for entry of the order. The Court has held a much less extended period adequate, as against constitutional objections, for purposes of making defense in criminal prosecution. *Yakus* v. *United States*, 321 U. S. 414. *A fortiori*, in view of the character of the obligation and the previous adjudication upon full notice and hearing, the period allowed by the New York law for making further defense should be regarded as constitutionally sufficient, even if that law is thought to cut off that right of defense when the order for judgment is entered.

No more is involved than that the husband is commanded to make payment, unless conditions have changed so as to justify nonpayment when the due date arrives; and, if such changes have taken place, he is adequately warned that he will be precluded

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[7] There are two principal theories as to the nature of alimony. The modern view is that alimony "is a right of the same character as the right of support lost by the dissolution of the marriage." The historical view is that alimony "is a settlement of the property rights of the parties and a distribution of the assets of the quasi-partnership hitherto existing." Kelso, The Changing Social Setting of Alimony Law (1939) 6 Law & Contemp. Prob. 186, 194-195; Wilson *v.* Hinman, 182 N. Y. 408, 410-12.

[8] The duty of support, incurred upon marriage, is not merely the duty of a debtor arising upon a commercial transaction for the payment of a fixed sum with interest. Barber *v.* Barber, 217 N. C. 422, 428. Nor is a judgment which enforces that duty to be treated in all respects as one upon a commercial obligation in order to be constitutionally valid.

from proving or relying upon them to avoid payment of the pre-existing judgment, unless he makes the showing on or before that date. If the husband's defense is payment, he will be able subsequently to vacate or attack collaterally the judgment, since ordinarily it would be fraudulent for the wife to docket a judgment for back alimony no longer owed to her, as the Court's opinion suggests. Even if there were a legal or factual dispute relating to payment and the wife had acted in good faith in docketing the judgment, as in a case where she had acted in ignorance of prior payment to her agent, it is inconceivable that a court, upon a showing of payment, would refuse to vacate the judgment or that equity would not come to the husband's aid. Her attempt to enforce the judgment or retain its proceeds after learning of the satisfaction would be fraudulent.

I know of nothing in the Constitution which forbids a state thus to limit the husband's right to upset the terms of the general decree or which imposes upon the wife the duty of keeping him informed of matters concerning which the law of the state binds him to inform himself. Accordingly, if it were clear, as the Court assumes, that the New York law forbids the husband to bring forward his new defenses, if any, after the entry of the judgment, I should see no valid constitutional objection to the judgment, or a levy made pursuant to it, on the score of want of notice essential to due process.[9]

II.

But I am not convinced that New York law has the effect of cutting off all right of defense upon the docketing of an instalment for the purposes of execution. Although this Court held in *Sistare* v. *Sistare*, 218 U. S. 1, that under New York law accrued instalments of alimony could not be modified, this is no longer the case in New York. N. Y. Civ. Prac. Act § 1170; *Van Dusen* v. *Van Dusen*, 258 App. Div. 1020; *Eisinger* v. *Eisinger*, 261 App. Div. 22. See also *Karlin* v. *Karlin*, 280 N. Y. 32.

It is scarcely probable that, although such modification may be made after accrual but before docketing of judgment, the New

[9] See Jones v. Jones, 204 Ark. 654; also the authorities cited in note 13. It does not follow, however, that when alimony decrees are enforced by other means, for example through exercise of the contempt power, notice may not be required. Cf. Miller v. Miller, 79 Colo. 118.

York courts would hold that it could not be made after the formal act of docketing. The Court points to no decision which so rules and none has been cited or found. Indeed the Court's opinion indicates that the husband could set aside the judgment upon showing he had paid the instalment which it included. And in *Thayer* v. *Thayer*, 145 App. Div. 267, 270-271, which is concededly leading authority upon this general phase of New York law, the court said with reference to the practice of docketing judgments for back alimony without further notice than that given as foundation for the original decree:

> "It is sufficient that the court is satisfied from the proof presented to it that both parties are still alive and that the alimony remains unpaid. If the court is misled and an installment improperly docketed, the defendant will find no difficulty in having the mistake corrected."

And in *Caprio* v. *Caprio*, 169 Misc. 568, 572, it was stated:

> "The practice of docketing of a judgment for back alimony is a recognized practice . . . and the judgment is good if supported by facts, but like any other judgment it can be set aside or modified."

These statements made by courts familiar with the New York practice plainly indicate that in circumstances sufficient to justify such action the courts of New York not only will hear the defendant's objections after the judgment is docketed but, as in other cases when the showing is sufficient, will set aside the judgment or modify it as the facts may require. This, of course, may not mean that he will be heard to raise the identical objections which he might have presented before docketing, since it is entirely possible for the court to find that he was lacking in appropriate diligence in presenting them and should not have further opportunity to do so in view of that fact. But, whether or not this is true, the quoted statements of New York practice clearly indicate that in any case of serious hardship the defendant will not be foreclosed, merely by the docketing of the judgment, from advancing his objections by appropriate procedure and having them determined. In the face of such authoritative expressions concerning the local law and practice and in the absence of any contrary expression from a source of similar authority, this Court should not substitute its own long-distance judgment or assumption to

the opposite effect, especially since on its own theory the constitutionality of the New York statute in question falls on such an assumption.[10]

III.

If this view of the New York law is correct, the New York judgment is not wholly void for want of due process; for the petitioner is not deprived of any right of defense which he may be entitled to make. It is not apparent, nor has he shown, that even now he could not make full defense upon any substantially meritorious ground in the New York courts and succeed in having the judgment set aside.

Nor, as petitioner has made his case, is the question presented whether the New York judgment is so lacking in finality that it is not entitled to receive full faith and credit in other jurisdictions.[11] But if that question is taken to lurk inescapably in the record, in the view which I have taken of the state of the New York law, it does not follow that the objection is valid.

The judgment under New York law is prima facie valid, if it is not conclusively so. It affords foundation for the issuance and levy of execution. In the absence of timely assertion of grounds requiring it to be set aside, it becomes conclusive.

This Court has not heretofore held that such a judgment is not entitled to full faith and credit. Contrary dicta reflecting the belief that it would be lacking in necessary finality are, in my opinion, neither conclusive nor sound. Certainly in the absence of any suggestion that the judgment has been questioned in the

[10] The declaration in *Sistare v. Sistare*, 218 U. S. 1, 22, quoted in *Barber v. Barber*, 323 U. S. 77, 82, that "every reasonable implication must be resorted to against the existence of" a power to modify or revoke instalments of alimony already accrued "in the absence of clear language manifesting an intention to confer it" was addressed to a different question, finality for purposes of full faith and credit, cf. Part III of this opinion, and, if applied in this case, would be in direct contradiction of the rule that legislation is presumptively constitutional.

Under the decision of the Court, § 1171b of the New York Civil Practice Act may also be unconstitutional, as that section, enacted since the entry of the 1938 judgment, provides that the application for an order directing the entry of judgment for arrears in alimony "shall be upon such notice to the husband as the court may direct." It may be that under this wording the New York courts need not direct any notice at all.

[11] To have objected that the New York judgment was not sufficiently final to be entitled to receive full faith and credit would have been in contradiction of petitioner's objection that it deprived him of due process, since his due process argument is founded in the view that his rights have been conclusively adjudicated.

forum where rendered, adequate opportunity being there afforded, nothing but the most technical and absolute conception of "finality" could be thought to deprive it of credit. Beyond this, it is not apparent why all substantial rights of the defendant would not be fully secured, if the same effect were given to the New York judgment in the suit brought upon it elsewhere as it has in New York.

In the present case this would mean that the judgment would be enforced in the courts of the District of Columbia, unless after service of summons in the suit for enforcement there the defendant could show to the court's satisfaction a change in circumstances or other defense sufficient under New York law to require modification or setting aside of the award. Indeed the Court does not altogether foreclose this possibility, since it reserves the question whether, upon further proceedings in the District Court, the wife may amend her claim so as to rest upon the 1924 decree, as modified in 1926; and the husband then may make his defenses allowed by New York law. If that can be done with reference to the original decree, I see no reason why the same thing should be forbidden as to the 1938 judgment. And I think the question should be determined now, not in still another chapter of this long drawn out litigation.

The full faith and credit clause does not in any case require that a judgment, to be credited, must be endowed with absolute finality. It is enough, in my opinion, if the judgment is endowed by the law of its origin with finality sufficient to sustain the issuance and levy of execution, although the same law may afford an opportunity for setting aside or modifying it upon the making of a specified showing. This is true, in my opinion, whether the suit is on the 1938 judgment or on the original decree. There is no sound ground for distinguishing them so as to permit suit, with the right defense, upon the one and not upon the other. The considerations stated by Mr. Justice JACKSON in his concurring opinion in *Barber* v. *Barber*, 323 U. S. 77, 86, sufficiently state the reasons supporting the views set forth in this paragraph.[12]

[12] It was just such rigid notions of finality which long prevented recognition of the Court of Claims as a judicial body. See Gordon *v.* United States, 2 Wall. 561, 117 U. S. 698; United States *v.* Klein, 13 Wall. 128, 144-145. Subsequently the governing statute of the Court of Claims was amended, and since that time it has never been doubted that Congress may authorize an appeal to this Court from a final judgment of the Court of

Accordingly, whether one view or the other of the New York law is taken, I think the 1938 New York judgment is entitled to full faith and credit in the District of Columbia,[13] according to the exact effect it had in New York. Since, in my opinion, the law of that state allowed the defendant on proper showing to make the defense of change in situation, whether before or after the docketing of the judgment, the same effect should be given to the judgment in the District of Columbia. As no adequate basis for modifying the judgment was tendered or proved by the defendant in the District of Columbia proceeding, I think the judgment of the Court of Appeals should be affirmed in its entirety.

Mr. Justice BLACK joins in this opinion.

Claims. United States v. Klein, *supra*; Williams v. United States, 289 U. S. 553, 563-564.

Even if the judgment were not sufficiently final for full faith and credit purposes, it nevertheless would be within the discretion of the District of Columbia to give it effect on grounds of comity. The full faith and credit clause commands states in certain instances to recognize the judgments of sister states; it does not prohibit them from doing so in other instances. See Jacobs, The Enforcement of Foreign Decrees for Alimony (1939) 6 Law & Contemp. Prob. 250, 263-264. See generally Note, The Finality of Judgments in the Conflict of Laws (1941) 41 Col. L. Rev. 878, 884-887.

Upon the Court's treatment of the North Carolina law in Barber v. Barber, the reservations made by Mr. Justice Jackson were perhaps not required, since on that treatment the question now presented was not involved.

[13] See Dadmun v. Dadmun, 278 Mass. 217, where the Supreme Judicial Court of Massachusetts gave full faith and credit to a New York judgment for arrears in alimony which had been entered without notice to the defendant; Nelson, Divorce and Annulment (2d ed.) § 33.45; cf. Barns v. Barns, 9 Cal. App. 2d 427; Defoe v. Defoe, 116 W. Va. 197.

SUPREME COURT OF THE UNITED STATES.

No. 86.—October Term, 1945.

William H. Griffin, Petitioner, *vs.* Grace H. Griffin.	On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[February 25, 1946.]

Mr. Justice Frankfurter dissenting.

My brother Rutledge has discussed in detail difficulties involved in the Court's disposition of this case and I shall state briefly the grounds for my support of his conclusion.

The opportunity to defeat a claim—the right to notice before a court can determine liability—is a safeguard guaranteed by the Due Process Clause. But money judgments are not like peas in a pod. Because of differences in the source and function of liability, the demand of fairness which underlies the requirement of notice may well be satisfied by different procedures. A judgment for future alimony, as one of the incidents of jurisdiction to decree a divorce, is very unlike a judgment for the ordinary lump sum indebtedness. It is in effect an ambulatory judgment for each instalment as it becomes due. The obligation to pay arrears flows from the original judgment and may be pursued upon that judgment elsewhere than in the rendering State. *Barber* v. *Barber*, 21 How. 582; *Sistare* v. *Sistare*, 218 U. S. 1. For purposes of suability as a judgment elsewhere, the accrued instalments need not be reduced to judgment anew in the State of the original decree, whatever may be the requirements for the execution of that judgment in the rendering State.

But it is said that the State rendering the original judgment for alimony may allow, as New York has done here, mitigation of such judgment even as to accrued instalments. If so, such mitigating defenses may be set up when the decree for alimony is sued on in a sister State as well as when enforced in the rendering State. A judgment may have been paid and yet a suit thereon may be brought in another State. While such a defense, if well founded, precludes a second recovery on that judgment anywhere,

the availability of such a defense does not bar suit on such a judgment in a sister State. It runs counter to no requirement of Due Process to make a judgment debtor defend a suit on that judgment by claiming discharge of its liability, whether through payment or otherwise. Such a procedure is entirely consonant with the full faith and credit which "shall be given in each State to the . . . judicial Proceedings of every other State." Article IV, § 1 of the Constitution; see the concurring opinion in *Barber* v. *Barber*, 323 U. S. 77, 86, at 87. Moreover, the District of Columbia, as is true of a State, see *Thompson* v. *Thompson*, 226 U. S. 551, may as a matter of conflict of laws go beyond what is required by the Full Faith and Credit Clause. If, perchance, relief from accrued instalments is based on considerations of policy peculiarly within the local understanding and discretionary determination of judges of the originating jurisdiction, sister State tribunals have ample power of abstention to respect such local qualifications. In any event, access to this Court is always open on such a federal issue.

I agree therefore with my brother RUTLEDGE that the judgment below should be affirmed in its entirety. While formally the suit was on the New York judgment of 1938, this in turn was based on the original judgment for alimony. That judgment is in the record and is the real source of these proceedings. If a misdescription of a criminal prosecution is deemed a formal irrelevance so long as an offense is intrinsically charged, *Williams* v. *United States*, 168 U. S. 382, a misdescription by the pleader of the basis of a suit for accrued instalments on a judgment for alimony can hardly be too tight a knot for courts to untie.

Pleadings, particularly in a case of this sort, are no longer to be dealt with in the spirit of Baron Parke. See L. Hand, *The Deficiencies of Trials to Reach the Heart of the Matter* (1921), in 3 Lectures on Legal Topics, Association of the Bar of the City of New York (1926) 89. A suitor is entitled to have relief justified by the facts he has pleaded, whether he has accurately described his pleading or has asked for relief appropriate to the pleaded facts. See *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 68-69; *Bemis Bro. Bag Co.* v. *United States*, 289 U. S. 28, 34. The purpose of a complaint is to give the defendant fair notice of the claim against him. If it does that, the complaint is legally sufficient. Griffin could have had no doubt that his wife

was suing in The District of Columbia for unpaid instalments of alimony which New York, as part of the divorce proceedings, had decreed in her favor. Upon the record before us the petitioner disclaimed liability for these arrears on grounds which do not save him. We ought not to deny liability flowing from a live judgment by assuming that the petitioner has better grounds for avoiding liability than those that he has already asserted. If, perchance, he could satisfy the district court that he has failed to set up a valid defense through a reasonable misconception of what was the essence of his wife's suit, namely a suit for arrears of alimony which were her due, it would not be casting an unreasonable burden on the petitioner to require him to move to set aside the judgment on appropriate grounds.